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Legislative History – Montana Session Law

Chapter: 186 Session L: 1995

Bill Number: SB 384

Checklist of Bill History

History and Final Status Sheet	☒
Introduced Bill	☒
Fiscal Note	☒
Third Reading Bill	☐
Final Version of Bill	☐

House	**Senate**
Committee: Business & Labor	Committee: Labor & Employment Relations
Hearing Date(s): 3/06/1995	Hearing Date(s): 2/18/1995
Committee Report: 3/07/1995	Committee Report: 02/20/1995

Conference Committee

Hearing Date(s):

Conference Committee Report:

Compiler Notes

Compiled by: SK Marshall

Date: 1/15/2025

Notes:

Thank You!

3/24	TABLED IN COMMITTEE		
3/25	TAKEN FROM COMMITTEE AND PLACED ON 2ND READING	37	11
3/27	REREFERRED TO TAXATION		
3/29	MISSED TRANSMITTAL DEADLINE FOR 71ST DAY DIED IN COMMITTEE		

SB 384 INTRODUCED BY BENEDICT

GENERALLY REVISE WORKERS' COMPENSATION INSURANCE RATING LAWS

2/13	INTRODUCED		
2/13	FIRST READING		
2/13	REFERRED TO LABOR & EMPLOYMENT RELATIONS		
2/14	FISCAL NOTE REQUESTED		
2/18	HEARING		
2/20	FISCAL NOTE RECEIVED		
2/20	FISCAL NOTE PRINTED		
2/20	COMMITTEE REPORT—BILL PASSED AS AMENDED		
2/21	2ND READING PASSED	49	1
2/22	3RD READING PASSED	50	0
	TRANSMITTED TO HOUSE		
2/27	FIRST READING		
2/27	REFERRED TO BUSINESS & LABOR		
3/06	HEARING		
3/07	COMMITTEE REPORT—BILL CONCURRED		
3/08	2ND READING CONCURRED	94	3
3/09	3RD READING CONCURRED	94	3
	RETURNED TO SENATE		
3/15	SIGNED BY PRESIDENT		
3/15	SIGNED BY SPEAKER		
3/16	TRANSMITTED TO GOVERNOR		
3/21	SIGNED BY GOVERNOR CHAPTER NUMBER 186, EFFECTIVE DATE: 10/01/95		

SB 385 INTRODUCED BY ECK, ET AL.

RELATE TO MEDICAL SERVICES FOR CHILDREN OF POOR FAMILIES

2/13	INTRODUCED		
2/13	FIRST READING		
2/13	REFERRED TO PUBLIC HEALTH, WELFARE & SAFETY		
2/14	FISCAL NOTE REQUESTED		
2/18	HEARING		
2/18	FISCAL NOTE RECEIVED		
2/18	FISCAL NOTE PRINTED		
2/18	TABLED IN COMMITTEE		
2/23	MISSED TRANSMITTAL DEADLINE FOR 45TH DAY		
3/17	COMMITTEE REPORT—BILL PASSED AS AMENDED		
3/22	REVISE FISCAL NOTE RECEIVED		
3/23	REVISED FISCAL NOTE PRINTED		
3/24	2ND READING PASSED AS AMENDED	36	13
3/25	3RD READING PASSED	40	8
	TRANSMITTED TO HOUSE		
3/27	FIRST READING		
3/27	REFERRED TO HUMAN SERVICES & AGING		
3/31	HEARING		
4/04	COMMITTEE REPORT—BILL CONCURRED		
4/06	2ND READING CONCURRED AS AMENDED	76	23
4/08	3RD READING CONCURRED	80	14

SENATE BILL NO. 384

INTRODUCED BY Benedict

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING THE WORKERS' COMPENSATION INSURANCE RATING LAWS; PROVIDING DEFINITIONS; PROVIDING FOR THE DETERMINATION OF A COMPETITIVE WORKERS' COMPENSATION MARKET; REQUIRING THE COMMISSIONER OF INSURANCE TO DESIGNATE AN ADVISORY ORGANIZATION; AUTHORIZING THE FILING AND ADOPTION BY AN INSURER OF AN ADVISORY ORGANIZATION'S PROSPECTIVE LOSS COSTS; AUTHORIZING AN INSURER TO FILE ITS OWN RATES AND SUPPLEMENTARY RATE INFORMATION; PROVIDING FOR RATE REVIEW; ELIMINATING THE REQUIREMENT THAT A RATING ORGANIZATION FILE WORKERS' COMPENSATION RATES; AMENDING SECTIONS 33-16-303, 33-16-1002, 33-16-1011, 33-16-1012, 39-71-435, 39-71-2204, 39-71-2205, 39-71-2211, AND 39-71-2316, MCA; REPEALING SECTIONS 33-16-1004 AND 33-16-1005, MCA; AND PROVIDING AN APPLICABILITY DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

NEW SECTION. **Section 1. Definitions.** As used in this part, the following definitions apply:

(1) "Accepted actuarial standards" means the standards adopted by the casualty actuarial society in its Statement of Principles Regarding Property and Casualty Insurance Ratemaking and the Standards of Practice adopted by the actuarial standards board.

(2) "Advisory organization" means a person or organization that either has two or more member insurers or is controlled either directly or indirectly by two or more insurers and that assists insurers in ratemaking-related activities. The term does not include a joint underwriting association, any actuarial or legal consultant, or any employee of an insurer or insurers under common control or management or their employees or manager. As used in this subsection, two or more insurers who have a common ownership or operate in this state under common management or control constitute a single insurer.

(3) "Classification system" means the plan, system, or arrangement for recognizing differences in exposure to hazards among industries, occupations, or operations of insurance policyholders.

(4) "Contingencies" means provisions in rates to recognize the uncertainty of the estimates of losses, loss adjustment expenses, other operating expenses, and investment income and profit that

comprise those rates. The provisions may be explicit, including but not limited to a specific charge to reflect systematic variations of estimated costs from expected costs, or implicit, including but not limited to a consideration in selecting a single estimate from a reasonable range of estimates, or both.

(5) "Developed losses" means adjusted losses, including loss adjustment expenses, using accepted actuarial standards to eliminate the effect of differences between current payment or reserve estimates and those needed to provide actual ultimate loss payments, including loss adjustment expense payments.

(6) "Expenses" means the portion of a rate that is attributable to acquisition, filed supervision and collection expenses, general expenses and taxes, licenses, or fees.

(7) "Experience rating" means a rating procedure using past insurance experience of the individual policyholder to forecast future losses by measuring the policyholder's loss experience against the loss experience of policyholders in the same classification to produce a prospective premium credit, debit, or unity modification.

(8) "Insurer" means a person licensed to write workers' compensation insurance as a plan No. 2 insurer under the laws of the state.

(9) "Loss trending" means a procedure for projecting developed losses to the average date of loss for the period during which the policies are to be effective, including loss ratio trending.

(10) "Market" means the interaction in this state between buyers and plan No. 2 sellers of workers' compensation and employer's liability insurance pursuant to the provisions of this part.

(11) (a) "Prospective loss costs" means historical aggregate losses and loss adjustment expenses, including all assessments that are loss-based, projected through development to their ultimate value and through trending to a future point in time and ascertained by accepted actuarial standards.

(b) The term does not include provisions for profit or expenses other than loss adjustment expenses and assessments that are loss-based.

(12) "Pure premium rate" means the portion of the rate that represents the loss cost per unit of exposure, including loss adjustment expense.

(13) (a) "Rate" or "rates" means rate of premium, policy and membership fee, or any other charge made by an insurer for or in connection with a contract or policy of workers' compensation and employer's liability insurance, prior to application of individual risk variations based on loss or expense considerations.

(b) The term does not include minimum premiums.

(14) "Reserve estimates" means provisions for insurer obligations for future payments of loss or

loss adjustment expenses.

(15) "Statistical plan" means the plan, system, or arrangement that is used in collecting data.

(16) "Supplementary rate information" means a manual or plan of rates, statistical plan, classification system, minimum premium, policy fee, rating rule, rate-related underwriting rule, and any other information needed to determine the applicable premium for an individual insured that is consistent with the purposes of this part and with rules prescribed by rule of the commissioner.

(17) "Supporting information" means the experience and judgment of the filer and the experience or data of other insurers or advisory organizations relied on by the filer, the interpretation of any statistical data relied on by the filer, descriptions of methods used in making the rates, and any other similar information required to be filed by the commissioner.

NEW SECTION. **Section 2. Competitive market -- hearing.** (1) A competitive market is presumed to exist unless the commissioner, after hearing, issues an order stating that a reasonable degree of competition does not exist in the market. The order may not expire later than 1 year after issuance.

(2) In determining whether a reasonable degree of competition exists, the commissioner shall consider the following factors:

(a) the number of insurers actively engaged in providing coverage;

(b) market shares and changes in market shares;

(c) ease of entry into the market;

(d) market concentration among plan No. 2 insurers as measured by the Herfindahl-Hirschman index;

(e) whether long-term profitability for insurers in the market is unreasonably high in relation to the risks being insured;

(f) whether long-term profitability for insurers in the market is reasonable in relation to industries of comparable business risks; and

(g) generally accepted and relevant tests relating to competitive market structure, market performance, and market conduct.

(2) The workers' compensation insurance market may not be determined to be noncompetitive if the market concentration of the 50 largest insurers writing workers' compensation insurance under plan No. 2 satisfied the U.S. department of justice merger guidelines for an unconcentrated market.

(3) The commissioner's determinations must be made on the basis of findings of fact and conclusions of law.

NEW SECTION. **Section 3. Ratemaking standards -- review by commissioner.** (1) Rates may not be excessive, inadequate, or unfairly discriminatory.

(2) Rates in a competitive market are not excessive. Rates in a noncompetitive market are excessive if they are likely to produce a long-run profit that is unreasonably high in relation to services rendered.

(3) A rate may not be determined to be inadequate unless:

(a) it is clearly insufficient to sustain projected losses and expenses; and

(b) the rate is unreasonably low and the use of the rate by the insurer has had or, if continued, will tend to create a monopoly in the market; or

(c) funds equal to the full, ultimate cost of anticipated losses and loss adjustment expenses are not produced when prospective loss costs are applied to anticipated payrolls.

(4) Unfair discrimination exists if, after allowing for practical limitations, price differentials fail to reflect equitably the differences in expected losses and expenses. A rate is not unfairly discriminatory because different premiums result for policyholders with different loss exposures or expense levels.

(5) In determining whether rates comply with standards under subsection (1), consideration must be given to:

(a) past and prospective loss experience within and outside Montana, in accordance with accepted actuarial principles;

(b) catastrophe hazards and contingencies;

(c) past and prospective expenses within and outside Montana;

(d) loadings for leveling premium rates over time for dividends, savings, or unabsorbed premium deposits allowed or returned by insurers to their policyholders, members, or subscribers;

(e) a reasonable margin for underwriting profit; and

(f) all other relevant factors within and outside Montana.

(6) The systems of expense provisions included in the rates for use by an insurer or group of insurers may differ from those of any other insurer or group of insurers to reflect the requirements of the operating methods of the insurer or group insurers.

(7) The rate may contain provisions of contingencies and an allowance permitting a reasonable profit. In determining the reasonableness of a profit, consideration must be given to all investment income attributable to premiums and the reserves associated with those premiums.

(8) The commissioner may investigate and determine whether rates in Montana are excessive, inadequate, or unfairly discriminatory. In any investigation and determination, the commissioner shall also consider the factors specified in [section 2].

NEW SECTION. **Section 4. Dividends -- no regulation or prohibition.** (1) An advisory organization may not adopt a rule that would regulate or prohibit the payment of dividends, savings, or unabsorbed premium deposits allowed or returned by insurers to their policyholders, members, or subscribers.

(2) A plan for the payment of dividends, savings, or unabsorbed premium deposits allowed or returned by insurers to their policyholders, members, or subscribers is not a rating plan or system.

(3) It is an unfair trade practice under 33-18-1003 to make the payment of a dividend or any portion of it conditioned upon renewal of the policy or contract.

NEW SECTION. **Section 5. Membership in advisory organization.** (1) The commissioner shall designate one workers' compensation advisory organization to assist the commissioner in gathering, compiling, and reporting relevant statistical information. Each plan No. 2 and plan No. 3 workers' compensation insurer shall record and report its workers' compensation experience to the advisory organization as set forth in the uniform statistical plan approved by the commissioner.

(2) Each plan No. 2 and plan No. 3 workers' compensation insurer must be a member or subscriber of the workers' compensation advisory organization. Each workers' compensation insurer may adhere to the policy forms filed by the advisory organization.

(3) Each plan No. 2 and plan No. 3 workers' compensation insurer shall adhere to a uniform classification system and uniform experience rating plan that has been filed by the advisory organization with the commissioner and approved by the commissioner, subject to deviations from the uniform classification system and experience rating plan that a plan No. 3 insurer adopts pursuant to 39-71-2316(5).

(4) Each plan No. 2 and plan No. 3 workers' compensation insurer shall use the forms and adhere to the rules that the advisory organization shall develop and file with the commissioner. The forms and

rules must be reasonably related to the recording and reporting of data pursuant to the uniform statistical plan, the uniform experience rating plan, and the uniform classification system.

(5) The methodology of the experience rating plan required under subsection (3) must be based on:

(a) reasonable eligibility standards;

(b) incentives for loss prevention; and

(c) a premium differential to encourage safety.

(6) The advisory organization or an insurer may file rating plans with the commissioner that provide for prospective or retrospective premium adjustment based on an insured's expected or actual loss experience, including but not limited to scheduled rating adjustments, retrospective rating plans, optional deductible plans under 39-71-435, a construction industry premium credit plan under 39-71-2211, or other plans as authorized by statute or approved by the commissioner.

NEW SECTION. **Section 6. Interchange of rating plan -- data exchange -- cooperative action in ratemaking -- violation of part.** (1) Reasonable rules and plans may be adopted by the commissioner for the interchange of data necessary for the application of rating plans.

(2) To ensure conformity in administering rate regulatory laws, the commissioner, each insurer, and the advisory organization designated by the commissioner may exchange information and experience data with insurance regulatory officials, insurers, and advisory organizations in other states and may consult with them with respect to ratemaking and the application of rating systems.

(3) Cooperation among advisory organizations or among insurers and advisory organizations in ratemaking or in other matters within the scope of this part is authorized, but the filings resulting from the cooperation are subject to all provisions of this part.

(4) The commissioner may review the cooperative activities and practices. If, after hearing, any cooperative activity or practice is found to violate the provisions of this part, a written order may be issued specifying that the activity or practice violates the provision of this part and requiring the discontinuance of the activity or practice.

NEW SECTION. **Section 7. Rate filings.** (1) The workers' compensation advisory organization shall file with the commissioner:

(a) workers' compensation rates and rating plans that are limited to prospective loss costs;

(b) each workers' compensation policy form to be used by its members or subscribers;

(c) the uniform classification plan and rules of the advisory organization;

(d) the uniform experience rating plan and rules of the advisory organization; and

(e) any other information that the commissioner requests and is entitled to receive under this part.

(2) Each insurer shall file with the commissioner all rates, supplementary rate information, and any changes and amendments made by it for use in this state as required by the commissioner under [section 8(2)].

(3) An insurer may establish rates and supplementary rate information based upon the factors in [section 3]. An insurer may adopt by reference, with or without deviation, the prospective loss costs filed by the advisory organization or the rates and supplementary rate information filed by another insurer.

(4) An insurer may not make or issue a contract or policy of insurance under this part, except in accordance with the filings that are in effect for the insurer as provided in this part.

(5) In addition to other prohibitions in this part, an advisory organization may not file rates, supplementary rate information, or supporting information on behalf of an insurer.

(6) If each rate in a schedule of workers' compensation rates for specific classifications of risks filed by an insurer is not lower than the prospective loss costs contained in the schedule of workers' compensation rates for those classifications filed by an advisory organization under [section 7(1)], the schedule of rates filed by the insurer is not subject to [section 8(1)] but becomes effective upon filing.

NEW SECTION. **Section 8. Rate filing review.** (1) The commissioner shall review each insurance filing to ensure compliance with the following guidelines:

(a) The effective date of each workers' compensation insurer or advisory organization filing must be the date specified in the filing. The effective date of the filing may not be earlier than 30 days after the date on which the filing is received by the commissioner or the date of receipt of the information furnished in support of the filing, if the supporting information is required by the commissioner.

(b) Upon written application of the insurer or advisory organization, the commissioner may authorize a filing that becomes effective before the expiration of the period described in subsection (1)(a).

(c) A filing is considered to have met the requirements of this part unless disapproved by the commissioner within the period described in subsection (1)(a) or any extension of the period.

(2) Whenever a filing is not accompanied by the information required under this section, the commissioner shall inform the filer of the deficiency within 10 days of the initial filing. The filing is considered made when the required information is furnished or when the filer certifies to the commissioner that the additional information requested by the commissioner is not maintained or cannot be provided.

NEW SECTION. **Section 9. Improper rates -- hearing.** (1) If the commissioner finds that a rate is not in compliance with [section 3] or that a rate has been set in violation of [section 13], the commissioner shall order that its use be discontinued for any policy issued or renewed after the date of the order, and the order may prospectively provide for premium adjustment of any policy then in force.

(2) The order must be issued within 30 days after the close of a hearing, if one is requested by the insurer, or within a reasonable time fixed by the commissioner. The order expires 1 year after its effective date unless rescinded earlier by the commissioner.

(3) If the commissioner disapproves a rate under subsection (1), disapproval must take effect not less than 15 days after the commissioner's order and the last previous rate in effect for the insurer must be reimposed for a period of 1 year unless the commissioner approves a rate under the provisions of subsections (5) or (6).

(4) A determination made by the commissioner under this section must be in accordance with accepted actuarial standards on the basis of findings of fact and conclusions of law.

(5) For a period of 1 year after the effective date of a disapproval order under subsection (1), a rate adopted to replace one disapproved under the order may not be used until it has been filed with the commissioner and approved within 30 days.

(6) Whenever an insurer does not have legally effective rates pursuant to subsection (1), the commissioner shall, on the insurer's request, specify interim rates for the insurer that are adequate to protect the interests of all parties. The commissioner may order that a specified portion of the premiums be placed in a special reserve established by the insurer. When new rates become legally effective, the commissioner shall order the reserved funds or any overcharge in the interim rates to be distributed appropriately, except that minimal adjustments may not be required.

NEW SECTION. **Section 10. Restrictions on certain insurers -- waiting period.** (1) The commissioner may require that a particular insurer file any of its rates and supplementary rate information

30 days prior to the effective date of the rates, if the commissioner finds after a hearing that the protection of the interests of the insurer's insureds and the public in this state requires closer supervision of the insurer's rates.

(2) Upon written application by an insurer, the commissioner, following review, may authorize a filing, which is effective before the expiration of the period described in subsection (1).

(3) The filing must be approved or disapproved during the waiting period and, if not disapproved before the expiration of the waiting period, is considered to have met the requirements of this section.

(4) An insurer aggrieved by the commissioner's actions under this section may request a rehearing by the commissioner after the expiration of 12 months from the date of the commissioner's initial order.

NEW SECTION. **Section 11. Delay of rates in noncompetitive market.** (1) A 30-day waiting period may be implemented or extended under one of the following circumstances:

(a) after finding that the market is not competitive under [section 2], the commissioner adopts a rule requiring that any subsequent changes in rates or supplementary information must be filed with the commissioner at least 30 days before the changes become effective;

(b) the commissioner extends the waiting period under this section for a period not exceeding 30 additional days by written notice to the filer before the first 30-day period expires;

(c) upon written application by an insurer or advisory organization, the commissioner, following review, authorizes a filing, which becomes effective before the expiration of the period described in subsection (1)(a) or (1)(b); or

(d) the filing is approved or disapproved during the waiting period and, if not disapproved before the expiration of the waiting period, is considered to have met the requirements of this section.

(2) If a rule is adopted under subsection (1), the commissioner may require the filing of supporting data as to classes of risks or combinations of risk classes that the commissioner considers necessary for the proper functioning of the rate monitoring and regulating process. The supporting data must include:

(a) the experience and judgment of the filer and, to the extent that the filer wishes or the commissioner requires, the experience and judgment of other insurers or the advisory organization;

(b) the interpretation of any statistical data upon which the filer relied;

(c) a description of the actuarial and statistical methods used in setting the rate; and

(d) any other relevant matter required by the commissioner.

(3) A rule adopted under this section expires 1 year after adoption unless renewed by the commissioner after hearings and appropriate findings under this section.

(4) Whenever a filing is not accompanied by the information that the commissioner has required under subsection (2), the commissioner shall inform the insurer within 10 days of the initial filing. The filing is considered made when the required information is furnished.

NEW SECTION. **Section 12. Consent to rate.** Notwithstanding any other provision of this part, upon the written consent of the insured, filed with the commissioner, a rate in excess of that determined in accordance with the other provisions of this part may be used on any specific risk.

NEW SECTION. **Section 13. Acts reducing competition prohibited.** (1) In this section, the word "insurer" includes two or more affiliated insurers engaged in joint or cooperative underwriting, investment management, marketing, servicing, or administration of their business and affairs as insurers and:

(a) under common management; or

(b) under common controlling ownership or under other common effective legal control.

(2) An insurer or advisory organization may not:

(a) monopolize or attempt to monopolize or combine or conspire with any other person or persons to monopolize the business of insurance of any kind, subdivision, or class;

(b) agree with any other insurer or advisory organization to charge or adhere to any rate or rating plan other than the uniform experience rating plan or rating rules of the advisory organization, except as needed to comply with the requirements of [section 7];

(c) make an agreement with any other insurer, advisory organization, or other person to unreasonably restrain trade or substantially lessen competition in the business of insurance of any kind, subdivision, or class; or

(d) make an agreement with any other insurer or advisory organization to refuse to deal with any person in connection with the sale of insurance.

(3) The fact that two or more insurers, whether they are members or subscribers of a common advisory organization, use consistently or intermittently the same advisory organization rules or insurer guidelines, rating plans, rating schedules, rating rules, policy forms, rate classifications, underwriting rules, surveys, or inspections or similar materials is not sufficient in itself to support a finding that an agreement

exists.

(4) An advisory organization or member or subscriber of an advisory organization may not interfere with the right of any insurer to establish its rates independently of that advisory organization or to charge rates different from the rates made by that advisory organization.

(5) Except as required by [section 7], an advisory organization may not have or adopt any rule or exact any agreement or formulate or engage in any program that would require any member, subscriber, or other insurer to:

(a) adhere to its rates; or

(b) prevent any insurer from acting independently.

NEW SECTION. **Section 14. Advisory organization -- permitted activity.** An advisory organization may:

(1) develop statistical plans, including class definitions;

(2) collect statistical data from members, subscribers, or any other source;

(3) prepare and distribute pure premium rate data, adjusted for loss development and loss trending, in accordance with its statistical plan. The data and adjustments must be in sufficient detail to permit insurers to modify pure premiums based upon their own rating methods or interpretations of underlying data.

(4) prepare and distribute manuals for rating rules and rating schedules that do not contain any rules or schedules, including final rates, without information outside the manuals;

(5) distribute information that is filed with the commissioner and open to public inspection;

(6) conduct research and collect statistics in order to discover, identify, and classify information relating to causes or prevention of losses;

(7) prepare and file policy forms and endorsements and consult with members, subscribers, and others relative to their use and application;

(8) collect, compile, and distribute past and current prices of individual insurers, if the information is made available to the general public;

(9) conduct research and collect information to determine the impact of benefit level changes on pure premium rates;

(10) prepare and distribute rules and rating values for the uniform experience rating plan; and

(11) calculate and disseminate individual risk premium modification factors.

NEW SECTION. **Section 15. Advisory organization -- prohibited activity.** In addition to other prohibitions in this part, except as specifically permitted under [section 14], an advisory organization may not compile or distribute recommendations relating to rates that include expenses, other than loss adjustment expenses, or profit.

NEW SECTION. **Section 16. Penalties -- suspension of license.** (1) The commissioner may impose upon a person or organization that violates [sections 1 through 17] a penalty of not more than $500 for each violation.

(2) If the commissioner determines that the violation is willful, the commissioner may impose a penalty of not more than $1,000 for each violation in addition to any other penalty provided by law.

(3) The commissioner may suspend the license of an advisory insurer or organization that fails to comply with any order within the time set by the order or extension granted by the commissioner. The commissioner may not suspend a license for failure to comply with an order until the time prescribed for appeal from the order has expired or, if appealed, until the order has been affirmed. The commissioner may determine the period of a suspension, which remains in effect for the period unless modified or rescinded or until the order upon which the suspension is based is modified, rescinded, or reversed.

(4) Unless a consent decree has been entered, a penalty may not be imposed nor may a license be suspended or revoked unless the commissioner, following a hearing, issues a written order with findings of fact. The hearing must be held at least 10 days after written notice to the person or organization specifying the alleged violation.

(5) A party aggrieved by an order or decision of the commissioner may, within 30 days after receiving the commissioner's notice, make a written request for a hearing.

NEW SECTION. **Section 17. Appeals from commissioner.** (1) An order, decision, or act of the commissioner under this part may be appealed to district court upon petition of a person aggrieved.

(2) A petition for review must be filed within 60 days from notice of the order, decision, or act. The commencement of the proceeding does not affect enforcement or validity of the commissioner's action unless the court determines, after notice to the commissioner, that a stay of enforcement until further

direction of the court will not injure the interests of the public.

Section 18. Section 33-16-303, MCA, is amended to read:

"**33-16-303. Use of rates, rating systems, underwriting rules, and policy or bond forms of rating or advisory organizations -- agreements to adhere to.** (1) Members and subscribers of rating or advisory organizations may use the rates, rating systems, underwriting rules, or policy or bond forms of ~~such~~ those organizations, either consistently or intermittently, but, except as provided in 33-16-105, 33-16-302, 33-16-305, 33-16-307, and ~~33-16-1005 shall~~ [sections 1 through 17], may not agree with each other or rating organizations or others to adhere ~~thereto~~ to the organizations' rates, systems, rules, policy, or bond forms.

(2) The fact that two or more admitted insurers, whether or not members or subscribers of a rating or advisory organization, use, either consistently or intermittently, the rates or rating systems made or adopted by a rating organization or the underwriting rules or policy or bond forms prepared by a rating or advisory organization ~~shall~~ is not ~~be~~ sufficient in itself to support a finding that an agreement ~~to so adhere~~ prohibited under subsection (1) exists and may be used only for the purpose of supplementing or explaining direct evidence of the existence of any ~~such~~ agreement."

Section 19. Section 33-16-1002, MCA, is amended to read:

"**33-16-1002. Applicability of part.** This part, together and in conjunction with parts 1 through 4 of this chapter, applies to the making of premium rates for workers' compensation insurance issued under compensation plan No. 2 of the Workers' Compensation Act, Title 39, chapter 71, part 22, or related employer's liability insurance, but does not apply to reinsurance."

Section 20. Section 33-16-1011, MCA, is amended to read:

"**33-16-1011. Classification and rating committee -- membership -- term.** (1) There is a classification and rating committee.

(2) The committee is composed of five voting members, consisting of:

(a) two representatives of private insurance carriers writing workers' compensation insurance in Montana. The members must be appointed by the Montana commissioner of insurance.

(b) one licensed independent insurance producer who resides in Montana, appointed by the

commissioner of insurance;

(c) one representative of the state compensation insurance fund who is an employee of the state fund and who is appointed by the executive director of the state fund; and

(d) one representative of an employer who is insured by either a private insurance carrier or the state compensation insurance fund, appointed by the commissioner of insurance.

(3) Each member shall hold office for a period of 3 years. An appointee who fills the vacancy of a member whose term has not expired shall fill only the remaining term and may be reappointed for a full term.

(4) Before appointments are to be made by the commissioner of insurance under subsections (2)(a), (2)(b), and (2)(d), established private organizations representing insurance carriers, independent insurance producers, and employers may submit names of individuals they recommend for appointments. The commissioner of insurance shall give consideration to the names submitted before appointments are made. However, the commissioner of insurance is not required to appoint any person from the names submitted.

(5) The committee must be staffed by the ~~rating~~ advisory organization designated under [section 5] and be funded from the operations budget of the ~~rating~~ advisory organization. Committee members may, if they request, be paid their actual and necessary travel expenses.

(6) Documents and other information concerning the committee's actions must be made available for public review in the office of the commissioner of insurance."

Section 21. Section 33-16-1012, MCA, is amended to read:

"**33-16-1012. Functions and powers of classification and rating committee -- hearings -- rulemaking.** (1) The classification and rating committee shall:

(a) meet not less than semiannually to conduct its business;

(b) make the final determination regarding the establishment of all classifications;

~~(c) establish the advisory premium rates as provided for in 33-16-1005;~~

~~(d)~~(c) publish material and pamphlets as it considers appropriate;

~~(e)~~(d) act as a review committee concerning objections filed by employers in relation to classifications assigned to the employer by an insurer; and

~~(f)~~(e) make rules as may be necessary for the conduct of any business that is subject to notice and hearings. The rules must be published and adopted as provided in Title 2, chapter 4, part 3, and must be

published in the Administrative Rules of Montana as part of the rules promulgated by the commissioner of insurance.

(2) (a) A hearing conducted by the committee pursuant to subsection ~~(1)(e)~~ (1)(d) must be an informal proceeding as provided in 2-4-604.

(b) A party aggrieved by a decision of the committee rendered after a hearing conducted pursuant to subsection (2)(a) may petition for judicial review of the decision pursuant to Title 2, chapter 4, part 7.

(3) The committee is subject to the provisions of Title 2, chapter 3, parts 1 and 2."

Section 22. Section 39-71-435, MCA, is amended to read:

"**39-71-435. Workers' compensation and employers' liability insurance -- optional deductibles.** (1) An insurer issuing a workers' compensation or an employer's liability insurance policy may offer to the policyholder, as part of the policy or by endorsement, optional deductibles for benefits payable under the policy consistent with the standards contained in subsection (3).

(2) ~~A rating~~ The advisory organization designated under [section 5] may develop and file a deductible plan or plans on behalf of its members consistent with the standards contained in subsection (3).

(3) The commissioner of insurance shall approve a deductible plan that is in accordance with the following standards:

(a) Claimants' rights are properly protected and claimants' benefits are paid without regard to the deductible.

(b) Premium reductions reflect the type and level of the deductible, consistent with accepted actuarial standards.

(c) Premium reductions for deductibles are determined before application of any experience modification, premium surcharge, or premium discount.

(d) Recognition is given to policyholder characteristics, including but not limited to size, financial capabilities, nature of activities, and number of employees.

(e) The policyholder is liable to the insurer for the deductible amount in regard to benefits paid for compensable claims.

(f) The insurer pays all of the deductible amount applicable to a compensable claim to the person or provider entitled to benefits and then seeks reimbursement from the policyholder for the applicable

deductible amount.

(g) Failure by the policyholder to reimburse deductible amounts to the insurer is treated under the policy as nonpayment of premium.

(h) Losses subject to the deductible must be reported and recorded as losses for purposes of calculating rates for a policyholder on the same basis as losses under policies providing first dollar coverage.

(4) The state compensation insurance fund, plan No. 3, may adopt the plan filed by the ~~rating~~ advisory organization or adopt an optional deductible plan that meets the requirements of this section.

(5) For purposes of 39-71-201, liability for assessments must be ascertained based on premiums collected, in the case of policies written under plan No. 2, or on the assessment levied, in the case of policies written under plan No. 3, for which the policyholder would have been obligated without the deductible. For all other taxes and assessments based on premium, the amount of premium or assessment must be determined after application of the deductible."

Section 23. Section 39-71-2204, MCA, is amended to read:

"**39-71-2204. Insurer to submit notice of coverage within thirty days -- penalty for failure.** (1) The insurer shall, within 30 days after the issuance of the policy of workers' compensation insurance, submit to the department the notice of coverage stating the effective date of the policy insuring the employer and ~~such~~ other information ~~as~~ that may be required by the department.

(2) The department may:

(a) recognize the ~~national council on compensation insurance~~ advisory organization designated under [section 5] as an agent for authorized workers' compensation insurers in Montana; and

(b) under terms and conditions acceptable to the department, accept notice of coverage received from ~~the national council on compensation insurance~~ the advisory organization designated under [section 5] as the insurer's notice of coverage.

(3) The department may, in its discretion, assess a penalty of no more than $200 against an insurer that as a general business practice does not comply with the 30-day notice requirement set forth in subsection (1)."

Section 24. Section 39-71-2205, MCA, is amended to read:

"**39-71-2205. Policy in effect until canceled or replaced -- twenty-day notification of cancellation**

required -- penalty. (1) The policy remains in effect until canceled, and cancellation may take effect only by written notice to the named insured and to the department at least 20 days prior to the date of cancellation. However, the policy terminates on the effective date of a replacement or succeeding workers' compensation insurance policy issued to the insured. Nothing in this section prevents an insurer from canceling a policy of workers' compensation insurance before a replacement policy is issued to the insured.

(2) The department may:

(a) recognize ~~the national council on compensation insurance~~ the advisory organization designated under [section 5] as an agent for authorized workers' compensation insurers in Montana; and

(b) under terms and conditions acceptable to the department, accept notice of cancellation received from ~~the national council on compensation insurance~~ the advisory organization as the insurer's notice of cancellation.

(3) (a) The department may assess a penalty of up to $200 against an insurer that does not comply with the notice requirement in subsection (1).

(b) An insurer may contest the penalty assessment in a hearing conducted according to department rules."

Section 25. Section 39-71-2211, MCA, is amended to read:

"**39-71-2211. Premium rates for construction industry -- filing required.** (1) With respect to each classification of risk in the construction industry under plan No. 2, the ~~rating organization described in 33-16-1005~~ advisory organization designated under [section 5] shall file with the commissioner of insurance a method of computing premiums that does not impose a higher insurance premium solely because of an employer's higher rate of wages paid.

(2) The commissioner shall accept a filing under subsection (1) that includes a reasonable method of recognizing differences in rates of pay. This method must use a credit scale with the starting point set at one and one-half times the Montana average weekly wage as reported by the department.

(3) The ~~rating~~ advisory organization shall file a revenue neutral plan for new and renewed policies ~~by July 1, 1992,~~ for prompt and orderly transition to a method of computing premiums that is in compliance with the requirements of this section.

(4) The state compensation insurance fund, plan No. 3, shall adopt the plan filed by the ~~rating~~ advisory organization or adopt a credit scale plan that meets the requirements of this section."

Section 26. Section 39-71-2316, MCA, is amended to read:

"**39-71-2316. Powers of ~~the~~ state fund.** For the purposes of carrying out its functions, the state fund may:

(1) insure any employer for workers' compensation and occupational disease liability as the coverage is required by the laws of this state. The state fund may charge a minimum yearly premium to cover its administrative costs for coverage of a small employer.

(2) sue and be sued;

(3) except as provided in section 21, Chapter 4, Special Laws of May 1990, enter into contracts relating to the administration of the state fund, including claims management, servicing, and payment;

(4) collect and disburse money received;

(5) adopt classifications and charge premiums for the classifications so that the state fund will be neither more nor less than self-supporting. Premium rates for classifications may only be adopted and changed using a process, a procedure, formulas, and factors set forth in rules adopted under Title 2, chapter 4, parts 2 through 4. After ~~such~~ the rules have been adopted, the state fund need not follow the rulemaking provisions of Title 2, chapter 4, when changing classifications and premium rates. The contested case rights and provisions of Title 2, chapter 4, do not apply to an employer's classification or premium rate. The state fund ~~must~~ is required to belong to ~~the national council on compensation insurance~~ the advisory organization designated by the commissioner of insurance under [section 5] and ~~shall~~ may use the ~~classifications of employment~~ uniform classification system and experience rating plan adopted by the ~~national council and corresponding rates~~ advisory organization as a basis for setting its own rates.

(6) pay the amounts determined due under a policy of insurance issued by the state fund;

(7) hire personnel;

(8) declare dividends if there is an excess of assets over liabilities. However, dividends may not be paid until adequate actuarially determined reserves are set aside. If those reserves have been set aside, money that can be declared as a dividend must be transferred to the account created by 39-71-2321 for claims for injuries resulting from accidents that occurred before July 1, 1990, and used for the purposes of that account. After all claims funded by that account have been paid, dividends may be declared and paid to insureds.

(9) perform all functions and exercise all powers of a private insurance carrier that are necessary, appropriate, or convenient for the administration of the state fund."

NEW SECTION. **Section 27. Repealer.** Sections 33-16-1004 and 33-16-1005, MCA, are repealed.

NEW SECTION. **Section 28. Coordination.** If [this act] is passed and approved and if it amends 39-71-2316, then Senate Bill No. 21 is void.

NEW SECTION. **Section 29. Codification instruction.** [Sections 1 through 17] are intended to be codified as an integral part of Title 33, chapter 16, part 10, and the provisions of Title 33, chapter 16, part 10, apply to [sections 1 through 17].

NEW SECTION. **Section 30. Saving clause.** [This act] does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before [the effective date of this act].

NEW SECTION. **Section 31. Severability.** If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

NEW SECTION. **Section 32. Applicability.** [This act] applies to rate filings by the advisory organization on or after [the effective date of this act] and to rates filed by insurers on or after the effective date of the advisory organization's initially approved loss cost filing.

-END-

STATE OF MONTANA - FISCAL NOTE

Fiscal Note for SB0384, as introduced

DESCRIPTION OF PROPOSED LEGISLATION:
An act generally revising the workers' compensation insurance rating laws; providing definitions; providing for the determination of a competitive workers' compensation market; requiring the commissioner of insurance to designate an advisory organization.

ASSUMPTIONS:
1. The commissioner will adopt 30 pages of rules and conduct the required rules hearings at a cost of $3,550 in FY96 only.
2. The advisory council members will continue to pay their own travel expenses and staff support will continue to be provided by a non-state entity. No staff support or travel expenses will be required for advisory board meetings.
3. The commissioner will be required to conduct actuarial reviews of policy forms and rate filings. These include supplementary rate information and charges and amendments made for use in this state. The expenses of performing these duties can be absorbed by the current budget, assuming that the Governor's Executive Budget, as submitted, is the basis for determining changes in fiscal notes.
4. State Fund personnel would analyze differences between classification codes used by the State Fund and the advisory organization, and present the differences to the board of directors to obtain approval to deviate from advisory organization classification. The estimated cost to identify differences in approximately 400 class codes used by the State Fund would be $8,000 in FY96 only.

FISCAL IMPACT:

Expenditures:

	FY96 Difference	FY97 Difference
State Auditor:		
Operating expenses	3,550	0
State Fund:		
Operating expenses	8,000	0
Funding:		
General fund (01)	3,550	0
Proprietary fund (06)	8,000	0
Total	11,550	0

TECHNICAL NOTES:
Language in this bill and SB374 conflict in terms of membership in a rating organization and provision of individual policyholder information to others by the advisory organization.

Dave Lewis 2-19-95
DAVE LEWIS, BUDGET DIRECTOR DATE
Office of Budget and Program Planning

Steve Benedict 2-20-95
STEVE BENEDICT, PRIMARY SPONSOR DATE

Fiscal Note for SB0384, as introduced

SB 384

APPROVED BY COM ON LABOR
& EMPLOYMENT RELATIONS

SENATE BILL NO. 384

INTRODUCED BY BENEDICT

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING THE WORKERS' COMPENSATION INSURANCE RATING LAWS; PROVIDING DEFINITIONS; PROVIDING FOR THE DETERMINATION OF A COMPETITIVE WORKERS' COMPENSATION MARKET; REQUIRING THE COMMISSIONER OF INSURANCE TO DESIGNATE AN ADVISORY ORGANIZATION; AUTHORIZING THE FILING AND ADOPTION BY AN INSURER OF AN ADVISORY ORGANIZATION'S PROSPECTIVE LOSS COSTS; AUTHORIZING AN INSURER TO FILE ITS OWN RATES AND SUPPLEMENTARY RATE INFORMATION; PROVIDING FOR RATE REVIEW; ELIMINATING THE REQUIREMENT THAT A RATING ORGANIZATION FILE WORKERS' COMPENSATION RATES; AMENDING SECTIONS 33-16-303, 33-16-403, 33-16-1002, 33-16-1011, 33-16-1012, 39-71-435, 39-71-2204, 39-71-2205, 39-71-2211, AND 39-71-2316, MCA; REPEALING SECTIONS 33-16-1004 AND 33-16-1005, MCA; AND PROVIDING AN APPLICABILITY DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

NEW SECTION. **Section 1. Definitions.** As used in this part, the following definitions apply:

(1) "Accepted actuarial standards" means the standards adopted by the casualty actuarial society in its Statement of Principles Regarding Property and Casualty Insurance Ratemaking and the Standards of Practice adopted by the actuarial standards board.

(2) "Advisory organization" means a person or organization that either has two or more member insurers or is controlled either directly or indirectly by two or more insurers and that assists insurers in ratemaking-related activities. The term does not include a joint underwriting association, any actuarial or legal consultant, or any employee of an insurer or insurers under common control or management or their employees or manager. As used in this subsection, two or more insurers who have a common ownership or operate in this state under common management or control constitute a single insurer.

(3) "Classification system" means the plan, system, or arrangement for recognizing differences in exposure to hazards among industries, occupations, or operations of insurance policyholders.

(4) "Contingencies" means provisions in rates to recognize the uncertainty of the estimates of losses, loss adjustment expenses, other operating expenses, and investment income and profit that

comprise those rates. The provisions may be explicit, including but not limited to a specific charge to reflect systematic variations of estimated costs from expected costs, or implicit, including but not limited to a consideration in selecting a single estimate from a reasonable range of estimates, or both.

(5) "Developed losses" means adjusted losses, including loss adjustment expenses, using accepted actuarial standards to eliminate the effect of differences between current payment or reserve estimates and those needed to provide actual ultimate loss payments, including loss adjustment expense payments.

(6) "Expenses" means the portion of a rate that is attributable to acquisition, filed supervision and collection expenses, general expenses and taxes, licenses, or fees.

(7) "Experience rating" means a rating procedure using past insurance experience of the individual policyholder to forecast future losses by measuring the policyholder's loss experience against the loss experience of policyholders in the same classification to produce a prospective premium credit, debit, or unity modification.

(8) "Insurer" means a person licensed to write workers' compensation insurance as a plan No. 2 insurer under the laws of the state.

(9) "Loss trending" means a procedure for projecting developed losses to the average date of loss for the period during which the policies are to be effective, including loss ratio trending.

(10) "Market" means the interaction in this state between buyers and plan No. 2 sellers of workers' compensation and employer's liability insurance pursuant to the provisions of this part.

(11) (a) "Prospective loss costs" means historical aggregate losses and loss adjustment expenses, including all assessments that are loss-based, projected through development to their ultimate value and through trending to a future point in time and ascertained by accepted actuarial standards.

(b) The term does not include provisions for profit or expenses other than loss adjustment expenses and assessments that are loss-based.

(12) "Pure premium rate" means the portion of the rate that represents the loss cost per unit of exposure, including loss adjustment expense.

(13) (a) "Rate" or "rates" means rate of premium, policy and membership fee, or any other charge made by an insurer for or in connection with a contract or policy of workers' compensation and employer's liability insurance, prior to application of individual risk variations based on loss or expense considerations.

(b) The term does not include minimum premiums.

(14) "Reserve estimates" means provisions for insurer obligations for future payments of loss or

loss adjustment expenses.

(15) "Statistical plan" means the plan, system, or arrangement that is used in collecting data.

(16) "Supplementary rate information" means a manual or plan of rates, statistical plan, classification system, minimum premium, policy fee, rating rule, rate-related underwriting rule, and any other information needed to determine the applicable premium for an individual insured that is consistent with the purposes of this part and with rules prescribed by rule of the commissioner.

(17) "Supporting information" means the experience and judgment of the filer and the experience or data of other insurers or advisory organizations relied on by the filer, the interpretation of any statistical data relied on by the filer, descriptions of methods used in making the rates, and any other similar information required to be filed by the commissioner.

NEW SECTION. **Section 2. Competitive market -- hearing.** (1) A competitive market is presumed to exist unless the commissioner, after hearing, issues an order stating that a reasonable degree of competition does not exist in the market. The order may not expire later than 1 year after issuance.

(2) In determining whether a reasonable degree of competition exists, the commissioner shall consider the following factors:

(a) the number of insurers actively engaged in providing coverage;

(b) market shares and changes in market shares;

(c) ease of entry into the market;

(d) market concentration among plan No. 2 insurers as measured by the Herfindahl-Hirschman index;

(e) whether long-term profitability for insurers in the market is unreasonably high in relation to the risks being insured;

(f) whether long-term profitability for insurers in the market is reasonable in relation to industries of comparable business risks; and

(g) generally accepted and relevant tests relating to competitive market structure, market performance, and market conduct.

(2) The workers' compensation insurance market may not be determined to be noncompetitive if the market concentration of the 50 largest insurers writing workers' compensation insurance under plan No. 2 satisfied the U.S. department of justice merger guidelines for an unconcentrated market.

(3) The commissioner's determinations must be made on the basis of findings of fact and conclusions of law.

NEW SECTION. **Section 3. Ratemaking standards -- review by commissioner.** (1) Rates may not be excessive, inadequate, or unfairly discriminatory.

(2) Rates in a competitive market are not excessive. Rates in a noncompetitive market are excessive if they are likely to produce a long-run profit that is unreasonably high in relation to services rendered.

(3) A rate may not be determined to be inadequate unless:

(a) it is clearly insufficient to sustain projected losses and expenses; and

(b) the rate is unreasonably low and the use of the rate by the insurer has had or, if continued, will tend to create a monopoly in the market; or

(c) funds equal to the full, ultimate cost of anticipated losses and loss adjustment expenses are not produced when prospective loss costs are applied to anticipated payrolls.

(4) Unfair discrimination exists if, after allowing for practical limitations, price differentials fail to reflect equitably the differences in expected losses and expenses. A rate is not unfairly discriminatory because different premiums result for policyholders with different loss exposures or expense levels.

(5) In determining whether rates comply with standards under subsection (1), consideration must be given to:

(a) past and prospective loss experience within and outside Montana, in accordance with accepted actuarial principles;

(b) catastrophe hazards and contingencies;

(c) past and prospective expenses within and outside Montana;

(d) loadings for leveling premium rates over time for dividends, savings, or unabsorbed premium deposits allowed or returned by insurers to their policyholders, members, or subscribers;

(e) a reasonable margin for underwriting profit; and

(f) all other relevant factors within and outside Montana.

(6) The systems of expense provisions included in the rates for use by an insurer or group of insurers may differ from those of any other insurer or group of insurers to reflect the requirements of the operating methods of the insurer or group insurers.

(7) The rate may contain provisions of contingencies and an allowance permitting a reasonable profit. In determining the reasonableness of a profit, consideration must be given to all investment income attributable to premiums and the reserves associated with those premiums.

(8) The commissioner may investigate and determine whether rates in Montana are excessive, inadequate, or unfairly discriminatory. In any investigation and determination, the commissioner shall also consider the factors specified in [section 2].

NEW SECTION. **Section 4. Dividends -- no regulation or prohibition.** (1) An advisory organization may not adopt a rule that would regulate or prohibit the payment of dividends, savings, or unabsorbed premium deposits allowed or returned by insurers to their policyholders, members, or subscribers.

(2) A plan for the payment of dividends, savings, or unabsorbed premium deposits allowed or returned by insurers to their policyholders, members, or subscribers is not a rating plan or system.

(3) It is an unfair trade practice under 33-18-1003 to make the payment of a dividend or any portion of it conditioned upon renewal of the policy or contract.

NEW SECTION. **Section 5. Membership in advisory organization.** (1) The commissioner shall designate one workers' compensation advisory organization to assist the commissioner in gathering, compiling, and reporting relevant statistical information. Each ~~plan No. 2 and plan No. 3~~ workers' compensation insurer shall record and report its workers' compensation experience to the DESIGNATED advisory organization as set forth in the uniform statistical plan approved by the commissioner.

(2) Each ~~plan No. 2 and plan No. 3~~ workers' compensation insurer must be a member or subscriber of the DESIGNATED workers' compensation advisory organization. Each workers' compensation insurer may adhere to the policy forms filed by the advisory organization.

(3) Each ~~plan No. 2 and plan No. 3~~ workers' compensation insurer shall adhere to a uniform classification system and uniform experience rating plan that has been filed by the DESIGNATED advisory organization with the commissioner and approved by the commissioner~~, subject to deviations from the uniform classification system and experience rating plan that a plan No. 3 insurer adopts pursuant to 39-71-2316(5)~~.

(4) Each ~~plan No. 2 and plan No. 3~~ workers' compensation insurer shall use the forms and adhere to the rules that the DESIGNATED advisory organization shall develop and file with the commissioner. The

forms and rules must be reasonably related to the recording and reporting of data pursuant to the uniform statistical plan, the uniform experience rating plan, and the uniform classification system.

(5) The methodology of the experience rating plan required under subsection (3) must be based on:

(a) reasonable eligibility standards;

(b) incentives for loss prevention; and

(c) a premium differential to encourage safety.

(6) The DESIGNATED advisory organization or an insurer may file rating plans with the commissioner that provide for prospective or retrospective premium adjustment based on an insured's expected or actual loss experience, including but not limited to scheduled rating adjustments, retrospective rating plans, optional deductible plans under 39-71-435, a construction industry premium credit plan under 39-71-2211, or other plans as authorized by statute or approved by the commissioner.

NEW SECTION. **SECTION 6. PLAN NO. 3 MEMBERSHIP IN LICENSED WORKERS' COMPENSATION ADVISORY ORGANIZATION -- REPORTING REQUIREMENTS.** (1) THE PLAN NO. 3 INSURER UNDER TITLE 39, CHAPTER 71, PART 23, IS REQUIRED TO BE A MEMBER OF A LICENSED WORKERS' COMPENSATION ADVISORY ORGANIZATION OR A LICENSED WORKERS' COMPENSATION RATING ORGANIZATION UNDER TITLE 33, CHAPTER 16, PART 4.

(2) IF THE PLAN NO. 3 INSURER IS NOT A MEMBER OF THE WORKERS' COMPENSATION ADVISORY ORGANIZATION DESIGNATED UNDER [SECTION 5], THEN, SUBJECT TO THE DEVIATIONS FROM THE UNIFORM STATISTICAL PLAN, UNIFORM CLASSIFICATION SYSTEM, AND UNIFORM EXPERIENCE RATING PLANS THAT MAY BE APPROVED BY THE BOARD OF DIRECTORS OF THE PLAN NO. 3 INSURER AS PROVIDED IN 39-71-2316(5), THE INSURER SHALL:

(A) RECORD AND REPORT ITS WORKERS' COMPENSATION EXPERIENCE TO THE DESIGNATED ADVISORY ORGANIZATION AS REQUIRED IN THE UNIFORM STATISTICAL PLAN OF THE DESIGNATED WORKERS' COMPENSATION ADVISORY ORGANIZATION APPROVED BY THE COMMISSIONER, THE UNIFORM CLASSIFICATION SYSTEM, AND THE UNIFORM EXPERIENCE RATING PLAN THAT HAVE BEEN FILED BY THE DESIGNATED ADVISORY ORGANIZATION WITH AND APPROVED BY THE COMMISSIONER; AND

(B) USE THE FORMS AND ADHERE TO THE RULES THAT THE DESIGNATED ADVISORY

ORGANIZATION DEVELOPS AND FILES WITH THE COMMISSIONER UNDER [SECTION 5].

NEW SECTION. **Section 7. Interchange of rating plan -- data exchange -- cooperative action in ratemaking -- violation of part.** (1) Reasonable rules and plans may be adopted by the commissioner for the interchange of data necessary for the application of rating plans.

(2) To ensure conformity in administering rate regulatory laws, the commissioner, each insurer, and the advisory organization designated by the commissioner may exchange information and experience data with insurance regulatory officials, insurers, and advisory organizations in other states and may consult with them with respect to ratemaking and the application of rating systems.

(3) Cooperation among advisory organizations or among insurers and advisory organizations in ratemaking or in other matters within the scope of this part is authorized, but the filings resulting from the cooperation are subject to all provisions of this part.

(4) The commissioner may review the cooperative activities and practices. If, after hearing, any cooperative activity or practice is found to violate the provisions of this part, a written order may be issued specifying that the activity or practice violates the provision of this part and requiring the discontinuance of the activity or practice.

NEW SECTION. **Section 8. Rate filings.** (1) ~~The~~ A workers' compensation advisory organization shall file with the commissioner:

(a) workers' compensation rates and rating plans that are limited to prospective loss costs;

(b) each workers' compensation policy form to be used by its members or subscribers;

(c) the uniform classification plan and rules of the advisory organization;

(d) the uniform experience rating plan and rules of the advisory organization; and

(e) any other information that the commissioner requests and is entitled to receive under this part.

(2) Each insurer shall file with the commissioner all rates, supplementary rate information, and any changes and amendments made by it for use in this state as required by the commissioner under [section ~~8(2)~~ 9(2)].

(3) An insurer may establish rates and supplementary rate information based upon the factors in [section 3]. An insurer may adopt by reference, with or without deviation, the prospective loss costs filed by the advisory organization DESIGNATED UNDER [SECTION 5] or the rates and supplementary rate

information filed by another insurer.

(4) An insurer may not make or issue a contract or policy of insurance under this part, except in accordance with the filings that are in effect for the insurer as provided in this part.

(5) In addition to other prohibitions in this part, an advisory organization may not file rates, supplementary rate information, or supporting information on behalf of an insurer.

(6) If each rate in a schedule of workers' compensation rates for specific classifications of risks filed by an insurer is not lower than the prospective loss costs contained in the schedule of workers' compensation rates for those classifications filed by ~~an~~ THE DESIGNATED advisory organization under [section ~~7(1)~~ 8(1)], the schedule of rates filed by the insurer is not subject to [section ~~8(1)~~ 9(1)] but becomes effective upon filing.

NEW SECTION. **Section 9. Rate filing review.** (1) The commissioner shall review each insurance filing to ensure compliance with the following guidelines:

(a) The effective date of each workers' compensation insurer or advisory organization filing must be the date specified in the filing. The effective date of the filing may not be earlier than 30 days after the date on which the filing is received by the commissioner or the date of receipt of the information furnished in support of the filing, if the supporting information is required by the commissioner.

(b) Upon written application of the insurer or advisory organization, the commissioner may authorize a filing that becomes effective before the expiration of the period described in subsection (1)(a).

(c) A filing is considered to have met the requirements of this part unless disapproved by the commissioner within the period described in subsection (1)(a) or any extension of the period.

(2) Whenever a filing is not accompanied by the information required under this section, the commissioner shall inform the filer of the deficiency within 10 days of the initial filing. The filing is considered made when the required information is furnished or when the filer certifies to the commissioner that the additional information requested by the commissioner is not maintained or cannot be provided.

NEW SECTION. **Section 10. Improper rates -- hearing.** (1) If the commissioner finds that a rate is not in compliance with [section 3] or that a rate has been set in violation of [section ~~13~~ 14], the commissioner shall order that its use be discontinued for any policy issued or renewed after the date of the order, and the order may prospectively provide for premium adjustment of any policy then in force.

(2) The order must be issued within 30 days after the close of a hearing, if one is requested by the insurer, or within a reasonable time fixed by the commissioner. The order expires 1 year after its effective date unless rescinded earlier by the commissioner.

(3) If the commissioner disapproves a rate under subsection (1), disapproval must take effect not less than 15 days after the commissioner's order and the last previous rate in effect for the insurer must be reimposed for a period of 1 year unless the commissioner approves a rate under the provisions of subsections (5) or (6).

(4) A determination made by the commissioner under this section must be in accordance with accepted actuarial standards on the basis of findings of fact and conclusions of law.

(5) For a period of 1 year after the effective date of a disapproval order under subsection (1), a rate adopted to replace one disapproved under the order may not be used until it has been filed with the commissioner and approved within 30 days.

(6) Whenever an insurer does not have legally effective rates pursuant to subsection (1), the commissioner shall, on the insurer's request, specify interim rates for the insurer that are adequate to protect the interests of all parties. The commissioner may order that a specified portion of the premiums be placed in a special reserve established by the insurer. When new rates become legally effective, the commissioner shall order the reserved funds or any overcharge in the interim rates to be distributed appropriately, except that minimal adjustments may not be required.

NEW SECTION. **Section 11. Restrictions on certain insurers -- waiting period.** (1) The commissioner may require that a particular insurer file any of its rates and supplementary rate information 30 days prior to the effective date of the rates, if the commissioner finds after a hearing that the protection of the interests of the insurer's insureds and the public in this state requires closer supervision of the insurer's rates.

(2) Upon written application by an insurer, the commissioner, following review, may authorize a filing, which is effective before the expiration of the period described in subsection (1).

(3) The filing must be approved or disapproved during the waiting period and, if not disapproved before the expiration of the waiting period, is considered to have met the requirements of this section.

(4) An insurer aggrieved by the commissioner's actions under this section may request a rehearing by the commissioner after the expiration of 12 months from the date of the commissioner's initial order.

NEW SECTION. **Section 12. Delay of rates in noncompetitive market.** (1) A 30-day waiting period may be implemented or extended under one of the following circumstances:

(a) after finding that the market is not competitive under [section 2], the commissioner adopts a rule requiring that any subsequent changes in rates or supplementary information must be filed with the commissioner at least 30 days before the changes become effective;

(b) the commissioner extends the waiting period under this section for a period not exceeding 30 additional days by written notice to the filer before the first 30-day period expires;

(c) upon written application by an insurer or advisory organization, the commissioner, following review, authorizes a filing, which becomes effective before the expiration of the period described in subsection (1)(a) or (1)(b); or

(d) the filing is approved or disapproved during the waiting period and, if not disapproved before the expiration of the waiting period, is considered to have met the requirements of this section.

(2) If a rule is adopted under subsection (1), the commissioner may require the filing of supporting data as to classes of risks or combinations of risk classes that the commissioner considers necessary for the proper functioning of the rate monitoring and regulating process. The supporting data must include:

(a) the experience and judgment of the filer and, to the extent that the filer wishes or the commissioner requires, the experience and judgment of other insurers or the advisory organization DESIGNATED UNDER [SECTION 5];

(b) the interpretation of any statistical data upon which the filer relied;

(c) a description of the actuarial and statistical methods used in setting the rate; and

(d) any other relevant matter required by the commissioner.

(3) A rule adopted under this section expires 1 year after adoption unless renewed by the commissioner after hearings and appropriate findings under this section.

(4) Whenever a filing is not accompanied by the information that the commissioner has required under subsection (2), the commissioner shall inform the insurer within 10 days of the initial filing. The filing is considered made when the required information is furnished.

NEW SECTION. **Section 13. Consent to rate.** Notwithstanding any other provision of this part, upon the written consent of the insured, filed with the commissioner, a rate in excess of that determined in accordance with the other provisions of this part may be used on any specific risk.

NEW SECTION. **Section 14. Acts reducing competition prohibited.** (1) In this section, the word "insurer" includes two or more affiliated insurers engaged in joint or cooperative underwriting, investment management, marketing, servicing, or administration of their business and affairs as insurers and:

(a) under common management; or

(b) under common controlling ownership or under other common effective legal control.

(2) An insurer or advisory organization may not:

(a) monopolize or attempt to monopolize or combine or conspire with any other person or persons to monopolize the business of insurance of any kind, subdivision, or class;

(b) agree with any other insurer or advisory organization to charge or adhere to any rate or rating plan other than the uniform experience rating plan or rating rules of the advisory organization, except as needed to comply with the requirements of [section ~~7~~ 8];

(c) make an agreement with any other insurer, advisory organization, or other person to unreasonably restrain trade or substantially lessen competition in the business of insurance of any kind, subdivision, or class; or

(d) make an agreement with any other insurer or advisory organization to refuse to deal with any person in connection with the sale of insurance.

(3) The fact that two or more insurers, whether they are members or subscribers of a common advisory organization, use consistently or intermittently the same advisory organization rules or insurer guidelines, rating plans, rating schedules, rating rules, policy forms, rate classifications, underwriting rules, surveys, or inspections or similar materials is not sufficient in itself to support a finding that an agreement exists.

(4) An advisory organization or member or subscriber of an advisory organization may not interfere with the right of any insurer to establish its rates independently of that advisory organization or to charge rates different from the rates made by that advisory organization.

(5) Except as required by [section ~~7~~ 8], an advisory organization may not have or adopt any rule or exact any agreement or formulate or engage in any program that would require any member, subscriber, or other insurer to:

(a) adhere to its rates; or

(b) prevent any insurer from acting independently.

NEW SECTION. **Section 15. Advisory organization -- permitted activity.** An advisory organization may:

(1) develop statistical plans, including class definitions;

(2) collect statistical data from members, subscribers, or any other source;

(3) prepare and distribute pure premium rate data, adjusted for loss development and loss trending, in accordance with its statistical plan. The data and adjustments must be in sufficient detail to permit insurers to modify pure premiums based upon their own rating methods or interpretations of underlying data.

(4) prepare and distribute manuals for rating rules and rating schedules that do not contain any rules or schedules, including final rates, without information outside the manuals;

(5) distribute information that is filed with the commissioner and open to public inspection;

(6) conduct research and collect statistics in order to discover, identify, and classify information relating to causes or prevention of losses;

(7) prepare and file policy forms and endorsements and consult with members, subscribers, and others relative to their use and application;

(8) collect, compile, and distribute past and current prices of individual insurers, if the information is made available to the general public;

(9) conduct research and collect information to determine the impact of benefit level changes on pure premium rates;

(10) prepare and distribute rules and rating values for the uniform experience rating plan; and

(11) calculate and disseminate individual risk premium modification factors. INDIVIDUAL RISK PREMIUM MODIFICATION FACTORS MAY ONLY BE DISSEMINATED TO:

(A) A LICENSED PRODUCER OR A PLAN NO. 2 OR PLAN NO. 3 INSURER FOR THE BUSINESS OF INSURANCE ONLY; AND

(B) THE DEPARTMENT OF LABOR AND INDUSTRY FOR REGULATORY PURPOSES ONLY. INDIVIDUAL EMPLOYER PAYROLL AND LOSS INFORMATION MAY BE PROVIDED TO A PERSON OTHER THAN THE CURRENT LICENSED PRODUCER OR A PLAN NO. 2 OR PLAN NO. 3 INSURER ONLY AFTER OBTAINING THE EMPLOYER'S WRITTEN PERMISSION.

NEW SECTION. **Section 16. Advisory organization -- prohibited activity.** In addition to other

prohibitions in this part, except as specifically permitted under [section ~~14~~ 15], an advisory organization may not compile or distribute recommendations relating to rates that include expenses, other than loss adjustment expenses, or profit.

NEW SECTION. **Section 17. Penalties -- suspension of license.** (1) The commissioner may impose upon a person or organization that violates [sections 1 through ~~17~~ 18] a penalty of not more than $500 for each violation.

(2) If the commissioner determines that the violation is willful, the commissioner may impose a penalty of not more than $1,000 for each violation in addition to any other penalty provided by law.

(3) The commissioner may suspend the license of an ~~advisory~~ insurer or AN ADVISORY organization that fails to comply with any order within the time set by the order or extension granted by the commissioner. The commissioner may not suspend a license for failure to comply with an order until the time prescribed for appeal from the order has expired or, if appealed, until the order has been affirmed. The commissioner may determine the period of a suspension, which remains in effect for the period unless modified or rescinded or until the order upon which the suspension is based is modified, rescinded, or reversed.

(4) Unless a consent decree has been entered, a penalty may not be imposed nor may a license be suspended or revoked unless the commissioner, following a hearing, issues a written order with findings of fact. The hearing must be held at least 10 days after written notice to the person or organization specifying the alleged violation.

(5) A party aggrieved by an order or decision of the commissioner may, within 30 days after receiving the commissioner's notice, make a written request for a hearing.

NEW SECTION. **Section 18. Appeals from commissioner.** (1) An order, decision, or act of the commissioner under this part may be appealed to district court upon petition of a person aggrieved.

(2) A petition for review must be filed within 60 days from notice of the order, decision, or act. The commencement of the proceeding does not affect enforcement or validity of the commissioner's action unless the court determines, after notice to the commissioner, that a stay of enforcement until further direction of the court will not injure the interests of the public.

Section 19. Section 33-16-303, MCA, is amended to read:

"**33-16-303. Use of rates, rating systems, underwriting rules, and policy or bond forms of rating or advisory organizations -- agreements to adhere to.** (1) Members and subscribers of rating or advisory organizations may use the rates, rating systems, underwriting rules, or policy or bond forms of ~~such~~ those organizations, either consistently or intermittently, but, except as provided in 33-16-105, 33-16-302, 33-16-305, 33-16-307, and ~~33-16-1005 shall~~ [sections 1 through ~~17~~ 18], may not agree with each other or rating organizations or others to adhere ~~thereto~~ to the organizations' rates, systems, rules, policy, or bond forms.

(2) The fact that two or more admitted insurers, whether or not members or subscribers of a rating or advisory organization, use, either consistently or intermittently, the rates or rating systems made or adopted by a rating organization or the underwriting rules or policy or bond forms prepared by a rating or advisory organization ~~shall~~ is not ~~be~~ sufficient in itself to support a finding that an agreement ~~to so adhere~~ prohibited under subsection (1) exists and may be used only for the purpose of supplementing or explaining direct evidence of the existence of any ~~such~~ agreement."

SECTION 20. SECTION 33-16-403, MCA, IS AMENDED TO READ:

"**33-16-403. Examination of application and investigation of applicant -- issuance of license -- fee.** (1) The commissioner shall examine each application for license to act as a rating organization pursuant to this part or a workers' compensation advisory organization pursuant to part 10 and the documents filed ~~therewith~~ with the application and may make such further investigation of the applicant, its affairs, and its proposed plan of business as ~~he deems~~ the commissioner considers desirable.

(2) The commissioner shall issue the license applied for within 60 days of its filing ~~with him~~ if, from ~~such~~ the examination and investigation, ~~he~~ the commissioner is satisfied that:

(a) the business reputation of the applicant and its officers is good;

(b) the facilities of the applicant are adequate to enable it to furnish the services it proposes to furnish;

(c) the applicant and its proposed plan of operation conform to the requirements of this chapter.

(3) Otherwise, but only after hearing upon notice, the commissioner shall, in writing, deny the application and notify the applicant of ~~his~~ the decision and ~~his~~ the reasons therefor.

(4) The commissioner may grant an application in part only and issue a license to act as a rating

or workers' compensation advisory organization for one or more of the classes of insurance or subdivisions thereof or class of risk, or a part or combination thereof as are specified in the application, if the applicant qualifies for only a portion of the classes applied for.

(5) ~~Licenses~~ (a) Except as provided in subsection (5)(b), licenses issued pursuant to this section ~~shall~~ remain in effect until revoked as provided in this chapter. The fee for the license ~~shall be~~ is $100 annually ~~which shall~~ and must be deposited in the general fund.

(b) Each workers' compensation advisory organization is required to renew its license annually."

Section 21. Section 33-16-1002, MCA, is amended to read:

"**33-16-1002. Applicability of part.** This part, together and in conjunction with parts 1 through 4 of this chapter, applies to the making of premium rates for workers' compensation insurance issued under compensation plan No. 2 of the Workers' Compensation Act, Title 39, chapter 71, part 22, or related employer's liability insurance, but does not apply to reinsurance."

Section 22. Section 33-16-1011, MCA, is amended to read:

"**33-16-1011. Classification and rating committee -- membership -- term.** (1) There is a classification and rating committee.

(2) The committee is composed of five voting members, consisting of:

(a) two representatives of private insurance carriers writing workers' compensation insurance in Montana. The members must be appointed by the Montana commissioner of insurance.

(b) one licensed independent insurance producer who resides in Montana, appointed by the commissioner of insurance;

(c) one representative of the state compensation insurance fund who is an employee of the state fund and who is appointed by the executive director of the state fund; and

(d) one representative of an employer who is insured by either a private insurance carrier or the state compensation insurance fund, appointed by the commissioner of insurance.

(3) Each member shall hold office for a period of 3 years. An appointee who fills the vacancy of a member whose term has not expired shall fill only the remaining term and may be reappointed for a full term.

(4) Before appointments are to be made by the commissioner of insurance under subsections (2)(a),

(2)(b), and (2)(d), established private organizations representing insurance carriers, independent insurance producers, and employers may submit names of individuals they recommend for appointments. The commissioner of insurance shall give consideration to the names submitted before appointments are made. However, the commissioner of insurance is not required to appoint any person from the names submitted.

(5) The committee must be staffed by the ~~rating~~ advisory organization designated under [section 5] and be funded from the operations budget of the ~~rating~~ advisory organization. Committee members may, if they request, be paid their actual and necessary travel expenses.

(6) Documents and other information concerning the committee's actions must be made available for public review in the office of the commissioner of insurance."

Section 23. Section 33-16-1012, MCA, is amended to read:

"**33-16-1012. Functions and powers of classification and rating committee -- hearings -- rulemaking.** (1) The classification and rating committee shall:

(a) meet not less than semiannually to conduct its business;

(b) make the final determination regarding the establishment of all classifications;

~~(c) establish the advisory premium rates as provided for in 33-16-1005;~~

~~(d)~~(c) publish material and pamphlets as it considers appropriate;

~~(e)~~(d) act as a review committee concerning objections filed by employers in relation to classifications assigned to the employer by an insurer; and

~~(f)~~(e) make rules as may be necessary for the conduct of any business that is subject to notice and hearings. The rules must be published and adopted as provided in Title 2, chapter 4, part 3, and must be published in the Administrative Rules of Montana as part of the rules promulgated by the commissioner of insurance.

(2) (a) A hearing conducted by the committee pursuant to subsection ~~(1)(e)~~ (1)(d) must be an informal proceeding as provided in 2-4-604.

(b) A party aggrieved by a decision of the committee rendered after a hearing conducted pursuant to subsection (2)(a) may petition for judicial review of the decision pursuant to Title 2, chapter 4, part 7.

(3) The committee is subject to the provisions of Title 2, chapter 3, parts 1 and 2."

Section 24. Section 39-71-435, MCA, is amended to read:

"39-71-435. Workers' compensation and employers' liability insurance -- optional deductibles. (1) An insurer issuing a workers' compensation or an employer's liability insurance policy may offer to the policyholder, as part of the policy or by endorsement, optional deductibles for benefits payable under the policy consistent with the standards contained in subsection (3).

(2) ~~A rating~~ The advisory organization designated under [section 5] may develop and file a deductible plan or plans on behalf of its members consistent with the standards contained in subsection (3).

(3) The commissioner of insurance shall approve a deductible plan that is in accordance with the following standards:

(a) Claimants' rights are properly protected and claimants' benefits are paid without regard to the deductible.

(b) Premium reductions reflect the type and level of the deductible, consistent with accepted actuarial standards.

(c) Premium reductions for deductibles are determined before application of any experience modification, premium surcharge, or premium discount.

(d) Recognition is given to policyholder characteristics, including but not limited to size, financial capabilities, nature of activities, and number of employees.

(e) The policyholder is liable to the insurer for the deductible amount in regard to benefits paid for compensable claims.

(f) The insurer pays all of the deductible amount applicable to a compensable claim to the person or provider entitled to benefits and then seeks reimbursement from the policyholder for the applicable deductible amount.

(g) Failure by the policyholder to reimburse deductible amounts to the insurer is treated under the policy as nonpayment of premium.

(h) Losses subject to the deductible must be reported and recorded as losses for purposes of calculating rates for a policyholder on the same basis as losses under policies providing first dollar coverage.

(4) The state compensation insurance fund, plan No. 3, may adopt the plan filed by the DESIGNATED ~~rating~~ advisory organization or adopt an optional deductible plan that meets the requirements of this section.

(5) For purposes of 39-71-201, liability for assessments must be ascertained based on premiums

collected, in the case of policies written under plan No. 2, or on the assessment levied, in the case of policies written under plan No. 3, for which the policyholder would have been obligated without the deductible. For all other taxes and assessments based on premium, the amount of premium or assessment must be determined after application of the deductible."

Section 25. Section 39-71-2204, MCA, is amended to read:

"**39-71-2204. Insurer to submit notice of coverage within thirty days -- penalty for failure.** (1) The insurer shall, within 30 days after the issuance of the policy of workers' compensation insurance, submit to the department the notice of coverage stating the effective date of the policy insuring the employer and ~~such~~ other information ~~as~~ that may be required by the department.

(2) The department may:

(a) recognize the ~~national council on compensation insurance~~ advisory organization designated under [section 5] as an agent for authorized workers' compensation insurers in Montana; and

(b) under terms and conditions acceptable to the department, accept notice of coverage received from ~~the national council on compensation insurance~~ the advisory organization designated under [section 5] as the insurer's notice of coverage.

(3) The department may, in its discretion, assess a penalty of no more than $200 against an insurer that as a general business practice does not comply with the 30-day notice requirement set forth in subsection (1)."

Section 26. Section 39-71-2205, MCA, is amended to read:

"**39-71-2205. Policy in effect until canceled or replaced -- twenty-day notification of cancellation required -- penalty.** (1) The policy remains in effect until canceled, and cancellation may take effect only by written notice to the named insured and to the department at least 20 days prior to the date of cancellation. However, the policy terminates on the effective date of a replacement or succeeding workers' compensation insurance policy issued to the insured. Nothing in this section prevents an insurer from canceling a policy of workers' compensation insurance before a replacement policy is issued to the insured.

(2) The department may:

(a) recognize ~~the national council on compensation insurance~~ the advisory organization designated under [section 5] as an agent for authorized workers' compensation insurers in Montana; and

(b) under terms and conditions acceptable to the department, accept notice of cancellation received from ~~the national council on compensation insurance~~ the advisory organization, DESIGNATED UNDER [SECTION 5], as the insurer's notice of cancellation.

(3) (a) The department may assess a penalty of up to $200 against an insurer that does not comply with the notice requirement in subsection (1).

(b) An insurer may contest the penalty assessment in a hearing conducted according to department rules."

Section 27. Section 39-71-2211, MCA, is amended to read:

"**39-71-2211. Premium rates for construction industry -- filing required.** (1) With respect to each classification of risk in the construction industry under plan No. 2, the ~~rating organization described in 33-16-1005~~ advisory organization designated under [section 5] shall file with the commissioner of insurance a method of computing premiums that does not impose a higher insurance premium solely because of an employer's higher rate of wages paid.

(2) The commissioner shall accept a filing under subsection (1) that includes a reasonable method of recognizing differences in rates of pay. This method must use a credit scale with the starting point set at one and one-half times the Montana average weekly wage as reported by the department.

(3) The ~~rating~~ advisory organization shall file a revenue neutral plan for new and renewed policies ~~by July 1, 1992,~~ for prompt and orderly transition to a method of computing premiums that is in compliance with the requirements of this section.

(4) The state compensation insurance fund, plan No. 3, shall adopt the plan filed by the DESIGNATED ~~rating~~ advisory organization or adopt a credit scale plan that meets the requirements of this section."

Section 28. Section 39-71-2316, MCA, is amended to read:

"**39-71-2316. Powers of ~~the~~ state fund.** For the purposes of carrying out its functions, the state fund may:

(1) insure any employer for workers' compensation and occupational disease liability as the coverage is required by the laws of this state. The state fund may charge a minimum yearly premium to cover its administrative costs for coverage of a small employer.

(2) sue and be sued;

(3) except as provided in section 21, Chapter 4, Special Laws of May 1990, enter into contracts relating to the administration of the state fund, including claims management, servicing, and payment;

(4) collect and disburse money received;

(5) adopt classifications and charge premiums for the classifications so that the state fund will be neither more nor less than self-supporting. Premium rates for classifications may only be adopted and changed using a process, a procedure, formulas, and factors set forth in rules adopted under Title 2, chapter 4, parts 2 through 4. After ~~such~~ the rules have been adopted, the state fund need not follow the rulemaking provisions of Title 2, chapter 4, when changing classifications and premium rates. The contested case rights and provisions of Title 2, chapter 4, do not apply to an employer's classification or premium rate. The state fund ~~must~~ is required to belong to ~~the national council on compensation insurance~~ the A LICENSED WORKERS' COMPENSATION advisory organization ~~designated by the commissioner of insurance under [section 5]~~ OR A LICENSED WORKERS' COMPENSATION RATING ORGANIZATION UNDER TITLE 33, CHAPTER 16, PART 4, and ~~shall~~ may use the ~~classifications of employment~~ ~~uniform classification system and experience rating plan~~ CLASSIFICATIONS OF EMPLOYMENT adopted by the ~~national council and corresponding rates~~ DESIGNATED WORKERS' COMPENSATION advisory organization, AS PROVIDED IN TITLE 33, CHAPTER 16, PART 10, AND CORRESPONDING RATES as a basis for setting its own rates. EXCEPT AS PROVIDED IN TITLE 33, CHAPTER 16, PART 10, A WORKERS' COMPENSATION ADVISORY ORGANIZATION OR OTHER PERSON MAY NOT, WITHOUT FIRST OBTAINING THE WRITTEN PERMISSION OF THE EMPLOYER, USE, SELL, OR DISTRIBUTE AN EMPLOYER'S SPECIFIC PAYROLL OR LOSS INFORMATION, INCLUDING BUT NOT LIMITED TO EXPERIENCE MODIFICATION FACTORS.

(6) pay the amounts determined due under a policy of insurance issued by the state fund;

(7) hire personnel;

(8) declare dividends if there is an excess of assets over liabilities. However, dividends may not be paid until adequate actuarially determined reserves are set aside. If those reserves have been set aside, money that can be declared as a dividend must be transferred to the account created by 39-71-2321 for claims for injuries resulting from accidents that occurred before July 1, 1990, and used for the purposes of that account. After all claims funded by that account have been paid, dividends may be declared and paid to insureds.

(9) perform all functions and exercise all powers of a private insurance carrier that are necessary,

appropriate, or convenient for the administration of the state fund."

NEW SECTION. **Section 29. Repealer.** Sections 33-16-1004 and 33-16-1005, MCA, are repealed.

NEW SECTION. **Section 30. Coordination.** If [this act] is passed and approved and if it amends 39-71-2316, then Senate Bill No. 21 is void.

NEW SECTION. **Section 31. Codification instruction.** [Sections 1 through ~~17~~ 18] are intended to be codified as an integral part of Title 33, chapter 16, part 10, and the provisions of Title 33, chapter 16, part 10, apply to [sections 1 through ~~17~~ 18].

NEW SECTION. **Section 32. Saving clause.** [This act] does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before [the effective date of this act].

NEW SECTION. **Section 33. Severability.** If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

NEW SECTION. **Section 34. Applicability.** [This act] applies to rate filings by the advisory organization on or after [the effective date of this act] and to rates filed by insurers on or after the effective date of the advisory organization's initially approved loss cost filing.

-END-

SENATE BILL NO. 384

INTRODUCED BY BENEDICT

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING THE WORKERS' COMPENSATION INSURANCE RATING LAWS; PROVIDING DEFINITIONS; PROVIDING FOR THE DETERMINATION OF A COMPETITIVE WORKERS' COMPENSATION MARKET; REQUIRING THE COMMISSIONER OF INSURANCE TO DESIGNATE AN ADVISORY ORGANIZATION; AUTHORIZING THE FILING AND ADOPTION BY AN INSURER OF AN ADVISORY ORGANIZATION'S PROSPECTIVE LOSS COSTS; AUTHORIZING AN INSURER TO FILE ITS OWN RATES AND SUPPLEMENTARY RATE INFORMATION; PROVIDING FOR RATE REVIEW; ELIMINATING THE REQUIREMENT THAT A RATING ORGANIZATION FILE WORKERS' COMPENSATION RATES; AMENDING SECTIONS 33-16-303, 33-16-403, 33-16-1002, 33-16-1011, 33-16-1012, 39-71-435, 39-71-2204, 39-71-2205, 39-71-2211, AND 39-71-2316, MCA; REPEALING SECTIONS 33-16-1004 AND 33-16-1005, MCA; AND PROVIDING AN APPLICABILITY DATE."

THERE ARE NO CHANGES IN THIS BILL AND IT WILL NOT BE REPRINTED. PLEASE REFER TO SECOND READING COPY (YELLOW) FOR COMPLETE TEXT.

SENATE BILL NO. 384

INTRODUCED BY BENEDICT

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING THE WORKERS' COMPENSATION INSURANCE RATING LAWS; PROVIDING DEFINITIONS; PROVIDING FOR THE DETERMINATION OF A COMPETITIVE WORKERS' COMPENSATION MARKET; REQUIRING THE COMMISSIONER OF INSURANCE TO DESIGNATE AN ADVISORY ORGANIZATION; AUTHORIZING THE FILING AND ADOPTION BY AN INSURER OF AN ADVISORY ORGANIZATION'S PROSPECTIVE LOSS COSTS; AUTHORIZING AN INSURER TO FILE ITS OWN RATES AND SUPPLEMENTARY RATE INFORMATION; PROVIDING FOR RATE REVIEW; ELIMINATING THE REQUIREMENT THAT A RATING ORGANIZATION FILE WORKERS' COMPENSATION RATES; AMENDING SECTIONS 33-16-303, 33-16-403, 33-16-1002, 33-16-1011, 33-16-1012, 39-71-435, 39-71-2204, 39-71-2205, 39-71-2211, AND 39-71-2316, MCA; REPEALING SECTIONS 33-16-1004 AND 33-16-1005, MCA; AND PROVIDING AN APPLICABILITY DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

NEW SECTION. **Section 1. Definitions.** As used in this part, the following definitions apply:

(1) "Accepted actuarial standards" means the standards adopted by the casualty actuarial society in its Statement of Principles Regarding Property and Casualty Insurance Ratemaking and the Standards of Practice adopted by the actuarial standards board.

(2) "Advisory organization" means a person or organization that either has two or more member insurers or is controlled either directly or indirectly by two or more insurers and that assists insurers in ratemaking-related activities. The term does not include a joint underwriting association, any actuarial or legal consultant, or any employee of an insurer or insurers under common control or management or their employees or manager. As used in this subsection, two or more insurers who have a common ownership or operate in this state under common management or control constitute a single insurer.

(3) "Classification system" means the plan, system, or arrangement for recognizing differences in exposure to hazards among industries, occupations, or operations of insurance policyholders.

(4) "Contingencies" means provisions in rates to recognize the uncertainty of the estimates of losses, loss adjustment expenses, other operating expenses, and investment income and profit that

comprise those rates. The provisions may be explicit, including but not limited to a specific charge to reflect systematic variations of estimated costs from expected costs, or implicit, including but not limited to a consideration in selecting a single estimate from a reasonable range of estimates, or both.

(5) "Developed losses" means adjusted losses, including loss adjustment expenses, using accepted actuarial standards to eliminate the effect of differences between current payment or reserve estimates and those needed to provide actual ultimate loss payments, including loss adjustment expense payments.

(6) "Expenses" means the portion of a rate that is attributable to acquisition, filed supervision and collection expenses, general expenses and taxes, licenses, or fees.

(7) "Experience rating" means a rating procedure using past insurance experience of the individual policyholder to forecast future losses by measuring the policyholder's loss experience against the loss experience of policyholders in the same classification to produce a prospective premium credit, debit, or unity modification.

(8) "Insurer" means a person licensed to write workers' compensation insurance as a plan No. 2 insurer under the laws of the state.

(9) "Loss trending" means a procedure for projecting developed losses to the average date of loss for the period during which the policies are to be effective, including loss ratio trending.

(10) "Market" means the interaction in this state between buyers and plan No. 2 sellers of workers' compensation and employer's liability insurance pursuant to the provisions of this part.

(11) (a) "Prospective loss costs" means historical aggregate losses and loss adjustment expenses, including all assessments that are loss-based, projected through development to their ultimate value and through trending to a future point in time and ascertained by accepted actuarial standards.

(b) The term does not include provisions for profit or expenses other than loss adjustment expenses and assessments that are loss-based.

(12) "Pure premium rate" means the portion of the rate that represents the loss cost per unit of exposure, including loss adjustment expense.

(13) (a) "Rate" or "rates" means rate of premium, policy and membership fee, or any other charge made by an insurer for or in connection with a contract or policy of workers' compensation and employer's liability insurance, prior to application of individual risk variations based on loss or expense considerations.

(b) The term does not include minimum premiums.

(14) "Reserve estimates" means provisions for insurer obligations for future payments of loss or

loss adjustment expenses.

(15) "Statistical plan" means the plan, system, or arrangement that is used in collecting data.

(16) "Supplementary rate information" means a manual or plan of rates, statistical plan, classification system, minimum premium, policy fee, rating rule, rate-related underwriting rule, and any other information needed to determine the applicable premium for an individual insured that is consistent with the purposes of this part and with rules prescribed by rule of the commissioner.

(17) "Supporting information" means the experience and judgment of the filer and the experience or data of other insurers or advisory organizations relied on by the filer, the interpretation of any statistical data relied on by the filer, descriptions of methods used in making the rates, and any other similar information required to be filed by the commissioner.

NEW SECTION. **Section 2. Competitive market -- hearing.** (1) A competitive market is presumed to exist unless the commissioner, after hearing, issues an order stating that a reasonable degree of competition does not exist in the market. The order may not expire later than 1 year after issuance.

(2) In determining whether a reasonable degree of competition exists, the commissioner shall consider the following factors:

(a) the number of insurers actively engaged in providing coverage;

(b) market shares and changes in market shares;

(c) ease of entry into the market;

(d) market concentration among plan No. 2 insurers as measured by the Herfindahl-Hirschman index;

(e) whether long-term profitability for insurers in the market is unreasonably high in relation to the risks being insured;

(f) whether long-term profitability for insurers in the market is reasonable in relation to industries of comparable business risks; and

(g) generally accepted and relevant tests relating to competitive market structure, market performance, and market conduct.

(2) The workers' compensation insurance market may not be determined to be noncompetitive if the market concentration of the 50 largest insurers writing workers' compensation insurance under plan No. 2 satisfied the U.S. department of justice merger guidelines for an unconcentrated market.

(3) The commissioner's determinations must be made on the basis of findings of fact and conclusions of law.

NEW SECTION. **Section 3. Ratemaking standards -- review by commissioner.** (1) Rates may not be excessive, inadequate, or unfairly discriminatory.

(2) Rates in a competitive market are not excessive. Rates in a noncompetitive market are excessive if they are likely to produce a long-run profit that is unreasonably high in relation to services rendered.

(3) A rate may not be determined to be inadequate unless:

(a) it is clearly insufficient to sustain projected losses and expenses; and

(b) the rate is unreasonably low and the use of the rate by the insurer has had or, if continued, will tend to create a monopoly in the market; or

(c) funds equal to the full, ultimate cost of anticipated losses and loss adjustment expenses are not produced when prospective loss costs are applied to anticipated payrolls.

(4) Unfair discrimination exists if, after allowing for practical limitations, price differentials fail to reflect equitably the differences in expected losses and expenses. A rate is not unfairly discriminatory because different premiums result for policyholders with different loss exposures or expense levels.

(5) In determining whether rates comply with standards under subsection (1), consideration must be given to:

(a) past and prospective loss experience within and outside Montana, in accordance with accepted actuarial principles;

(b) catastrophe hazards and contingencies;

(c) past and prospective expenses within and outside Montana;

(d) loadings for leveling premium rates over time for dividends, savings, or unabsorbed premium deposits allowed or returned by insurers to their policyholders, members, or subscribers;

(e) a reasonable margin for underwriting profit; and

(f) all other relevant factors within and outside Montana.

(6) The systems of expense provisions included in the rates for use by an insurer or group of insurers may differ from those of any other insurer or group of insurers to reflect the requirements of the operating methods of the insurer or group insurers.

(7) The rate may contain provisions of contingencies and an allowance permitting a reasonable profit. In determining the reasonableness of a profit, consideration must be given to all investment income attributable to premiums and the reserves associated with those premiums.

(8) The commissioner may investigate and determine whether rates in Montana are excessive, inadequate, or unfairly discriminatory. In any investigation and determination, the commissioner shall also consider the factors specified in [section 2].

NEW SECTION. **Section 4. Dividends -- no regulation or prohibition.** (1) An advisory organization may not adopt a rule that would regulate or prohibit the payment of dividends, savings, or unabsorbed premium deposits allowed or returned by insurers to their policyholders, members, or subscribers.

(2) A plan for the payment of dividends, savings, or unabsorbed premium deposits allowed or returned by insurers to their policyholders, members, or subscribers is not a rating plan or system.

(3) It is an unfair trade practice under 33-18-1003 to make the payment of a dividend or any portion of it conditioned upon renewal of the policy or contract.

NEW SECTION. **Section 5. Membership in advisory organization.** (1) The commissioner shall designate one workers' compensation advisory organization to assist the commissioner in gathering, compiling, and reporting relevant statistical information. Each ~~plan No. 2 and plan No. 3~~ workers' compensation insurer shall record and report its workers' compensation experience to the DESIGNATED advisory organization as set forth in the uniform statistical plan approved by the commissioner.

(2) Each ~~plan No. 2 and plan No. 3~~ workers' compensation insurer must be a member or subscriber of the DESIGNATED workers' compensation advisory organization. Each workers' compensation insurer may adhere to the policy forms filed by the advisory organization.

(3) Each ~~plan No. 2 and plan No. 3~~ workers' compensation insurer shall adhere to a uniform classification system and uniform experience rating plan that has been filed by the DESIGNATED advisory organization with the commissioner and approved by the commissioner~~, subject to deviations from the uniform classification system and experience rating plan that a plan No. 3 insurer adopts pursuant to 39-71-2316(5)~~.

(4) Each ~~plan No. 2 and plan No. 3~~ workers' compensation insurer shall use the forms and adhere to the rules that the DESIGNATED advisory organization shall develop and file with the commissioner. The

forms and rules must be reasonably related to the recording and reporting of data pursuant to the uniform statistical plan, the uniform experience rating plan, and the uniform classification system.

(5) The methodology of the experience rating plan required under subsection (3) must be based on:

(a) reasonable eligibility standards;

(b) incentives for loss prevention; and

(c) a premium differential to encourage safety.

(6) The DESIGNATED advisory organization or an insurer may file rating plans with the commissioner that provide for prospective or retrospective premium adjustment based on an insured's expected or actual loss experience, including but not limited to scheduled rating adjustments, retrospective rating plans, optional deductible plans under 39-71-435, a construction industry premium credit plan under 39-71-2211, or other plans as authorized by statute or approved by the commissioner.

NEW SECTION. **SECTION 6. PLAN NO. 3 MEMBERSHIP IN LICENSED WORKERS' COMPENSATION ADVISORY ORGANIZATION -- REPORTING REQUIREMENTS.** (1) THE PLAN NO. 3 INSURER UNDER TITLE 39, CHAPTER 71, PART 23, IS REQUIRED TO BE A MEMBER OF A LICENSED WORKERS' COMPENSATION ADVISORY ORGANIZATION OR A LICENSED WORKERS' COMPENSATION RATING ORGANIZATION UNDER TITLE 33, CHAPTER 16, PART 4.

(2) IF THE PLAN NO. 3 INSURER IS NOT A MEMBER OF THE WORKERS' COMPENSATION ADVISORY ORGANIZATION DESIGNATED UNDER [SECTION 5], THEN, SUBJECT TO THE DEVIATIONS FROM THE UNIFORM STATISTICAL PLAN, UNIFORM CLASSIFICATION SYSTEM, AND UNIFORM EXPERIENCE RATING PLANS THAT MAY BE APPROVED BY THE BOARD OF DIRECTORS OF THE PLAN NO. 3 INSURER AS PROVIDED IN 39-71-2316(5), THE INSURER SHALL:

(A) RECORD AND REPORT ITS WORKERS' COMPENSATION EXPERIENCE TO THE DESIGNATED ADVISORY ORGANIZATION AS REQUIRED IN THE UNIFORM STATISTICAL PLAN OF THE DESIGNATED WORKERS' COMPENSATION ADVISORY ORGANIZATION APPROVED BY THE COMMISSIONER, THE UNIFORM CLASSIFICATION SYSTEM, AND THE UNIFORM EXPERIENCE RATING PLAN THAT HAVE BEEN FILED BY THE DESIGNATED ADVISORY ORGANIZATION WITH AND APPROVED BY THE COMMISSIONER; AND

(B) USE THE FORMS AND ADHERE TO THE RULES THAT THE DESIGNATED ADVISORY

ORGANIZATION DEVELOPS AND FILES WITH THE COMMISSIONER UNDER [SECTION 5].

NEW SECTION. **Section 7. Interchange of rating plan -- data exchange -- cooperative action in ratemaking -- violation of part.** (1) Reasonable rules and plans may be adopted by the commissioner for the interchange of data necessary for the application of rating plans.

(2) To ensure conformity in administering rate regulatory laws, the commissioner, each insurer, and the advisory organization designated by the commissioner may exchange information and experience data with insurance regulatory officials, insurers, and advisory organizations in other states and may consult with them with respect to ratemaking and the application of rating systems.

(3) Cooperation among advisory organizations or among insurers and advisory organizations in ratemaking or in other matters within the scope of this part is authorized, but the filings resulting from the cooperation are subject to all provisions of this part.

(4) The commissioner may review the cooperative activities and practices. If, after hearing, any cooperative activity or practice is found to violate the provisions of this part, a written order may be issued specifying that the activity or practice violates the provision of this part and requiring the discontinuance of the activity or practice.

NEW SECTION. **Section 8. Rate filings.** (1) ~~The~~ A workers' compensation advisory organization shall file with the commissioner:

(a) workers' compensation rates and rating plans that are limited to prospective loss costs;

(b) each workers' compensation policy form to be used by its members or subscribers;

(c) the uniform classification plan and rules of the advisory organization;

(d) the uniform experience rating plan and rules of the advisory organization; and

(e) any other information that the commissioner requests and is entitled to receive under this part.

(2) Each insurer shall file with the commissioner all rates, supplementary rate information, and any changes and amendments made by it for use in this state as required by the commissioner under [section ~~8(2)~~ 9(2)].

(3) An insurer may establish rates and supplementary rate information based upon the factors in [section 3]. An insurer may adopt by reference, with or without deviation, the prospective loss costs filed by the advisory organization DESIGNATED UNDER [SECTION 5] or the rates and supplementary rate

information filed by another insurer.

(4) An insurer may not make or issue a contract or policy of insurance under this part, except in accordance with the filings that are in effect for the insurer as provided in this part.

(5) In addition to other prohibitions in this part, an advisory organization may not file rates, supplementary rate information, or supporting information on behalf of an insurer.

(6) If each rate in a schedule of workers' compensation rates for specific classifications of risks filed by an insurer is not lower than the prospective loss costs contained in the schedule of workers' compensation rates for those classifications filed by ~~an~~ THE DESIGNATED advisory organization under [section ~~7(1)~~ 8(1)], the schedule of rates filed by the insurer is not subject to [section ~~8(1)~~ 9(1)] but becomes effective upon filing.

NEW SECTION. **Section 9. Rate filing review.** (1) The commissioner shall review each insurance filing to ensure compliance with the following guidelines:

(a) The effective date of each workers' compensation insurer or advisory organization filing must be the date specified in the filing. The effective date of the filing may not be earlier than 30 days after the date on which the filing is received by the commissioner or the date of receipt of the information furnished in support of the filing, if the supporting information is required by the commissioner.

(b) Upon written application of the insurer or advisory organization, the commissioner may authorize a filing that becomes effective before the expiration of the period described in subsection (1)(a).

(c) A filing is considered to have met the requirements of this part unless disapproved by the commissioner within the period described in subsection (1)(a) or any extension of the period.

(2) Whenever a filing is not accompanied by the information required under this section, the commissioner shall inform the filer of the deficiency within 10 days of the initial filing. The filing is considered made when the required information is furnished or when the filer certifies to the commissioner that the additional information requested by the commissioner is not maintained or cannot be provided.

NEW SECTION. **Section 10. Improper rates -- hearing.** (1) If the commissioner finds that a rate is not in compliance with [section 3] or that a rate has been set in violation of [section ~~13~~ 14], the commissioner shall order that its use be discontinued for any policy issued or renewed after the date of the order, and the order may prospectively provide for premium adjustment of any policy then in force.

(2) The order must be issued within 30 days after the close of a hearing, if one is requested by the insurer, or within a reasonable time fixed by the commissioner. The order expires 1 year after its effective date unless rescinded earlier by the commissioner.

(3) If the commissioner disapproves a rate under subsection (1), disapproval must take effect not less than 15 days after the commissioner's order and the last previous rate in effect for the insurer must be reimposed for a period of 1 year unless the commissioner approves a rate under the provisions of subsections (5) or (6).

(4) A determination made by the commissioner under this section must be in accordance with accepted actuarial standards on the basis of findings of fact and conclusions of law.

(5) For a period of 1 year after the effective date of a disapproval order under subsection (1), a rate adopted to replace one disapproved under the order may not be used until it has been filed with the commissioner and approved within 30 days.

(6) Whenever an insurer does not have legally effective rates pursuant to subsection (1), the commissioner shall, on the insurer's request, specify interim rates for the insurer that are adequate to protect the interests of all parties. The commissioner may order that a specified portion of the premiums be placed in a special reserve established by the insurer. When new rates become legally effective, the commissioner shall order the reserved funds or any overcharge in the interim rates to be distributed appropriately, except that minimal adjustments may not be required.

NEW SECTION. **Section 11. Restrictions on certain insurers -- waiting period.** (1) The commissioner may require that a particular insurer file any of its rates and supplementary rate information 30 days prior to the effective date of the rates, if the commissioner finds after a hearing that the protection of the interests of the insurer's insureds and the public in this state requires closer supervision of the insurer's rates.

(2) Upon written application by an insurer, the commissioner, following review, may authorize a filing, which is effective before the expiration of the period described in subsection (1).

(3) The filing must be approved or disapproved during the waiting period and, if not disapproved before the expiration of the waiting period, is considered to have met the requirements of this section.

(4) An insurer aggrieved by the commissioner's actions under this section may request a rehearing by the commissioner after the expiration of 12 months from the date of the commissioner's initial order.

NEW SECTION. **Section 12. Delay of rates in noncompetitive market.** (1) A 30-day waiting period may be implemented or extended under one of the following circumstances:

(a) after finding that the market is not competitive under [section 2], the commissioner adopts a rule requiring that any subsequent changes in rates or supplementary information must be filed with the commissioner at least 30 days before the changes become effective;

(b) the commissioner extends the waiting period under this section for a period not exceeding 30 additional days by written notice to the filer before the first 30-day period expires;

(c) upon written application by an insurer or advisory organization, the commissioner, following review, authorizes a filing, which becomes effective before the expiration of the period described in subsection (1)(a) or (1)(b); or

(d) the filing is approved or disapproved during the waiting period and, if not disapproved before the expiration of the waiting period, is considered to have met the requirements of this section.

(2) If a rule is adopted under subsection (1), the commissioner may require the filing of supporting data as to classes of risks or combinations of risk classes that the commissioner considers necessary for the proper functioning of the rate monitoring and regulating process. The supporting data must include:

(a) the experience and judgment of the filer and, to the extent that the filer wishes or the commissioner requires, the experience and judgment of other insurers or the advisory organization DESIGNATED UNDER [SECTION 5];

(b) the interpretation of any statistical data upon which the filer relied;

(c) a description of the actuarial and statistical methods used in setting the rate; and

(d) any other relevant matter required by the commissioner.

(3) A rule adopted under this section expires 1 year after adoption unless renewed by the commissioner after hearings and appropriate findings under this section.

(4) Whenever a filing is not accompanied by the information that the commissioner has required under subsection (2), the commissioner shall inform the insurer within 10 days of the initial filing. The filing is considered made when the required information is furnished.

NEW SECTION. **Section 13. Consent to rate.** Notwithstanding any other provision of this part, upon the written consent of the insured, filed with the commissioner, a rate in excess of that determined in accordance with the other provisions of this part may be used on any specific risk.

NEW SECTION. **Section 14. Acts reducing competition prohibited.** (1) In this section, the word "insurer" includes two or more affiliated insurers engaged in joint or cooperative underwriting, investment management, marketing, servicing, or administration of their business and affairs as insurers and:

(a) under common management; or

(b) under common controlling ownership or under other common effective legal control.

(2) An insurer or advisory organization may not:

(a) monopolize or attempt to monopolize or combine or conspire with any other person or persons to monopolize the business of insurance of any kind, subdivision, or class;

(b) agree with any other insurer or advisory organization to charge or adhere to any rate or rating plan other than the uniform experience rating plan or rating rules of the advisory organization, except as needed to comply with the requirements of [section ~~7~~ 8];

(c) make an agreement with any other insurer, advisory organization, or other person to unreasonably restrain trade or substantially lessen competition in the business of insurance of any kind, subdivision, or class; or

(d) make an agreement with any other insurer or advisory organization to refuse to deal with any person in connection with the sale of insurance.

(3) The fact that two or more insurers, whether they are members or subscribers of a common advisory organization, use consistently or intermittently the same advisory organization rules or insurer guidelines, rating plans, rating schedules, rating rules, policy forms, rate classifications, underwriting rules, surveys, or inspections or similar materials is not sufficient in itself to support a finding that an agreement exists.

(4) An advisory organization or member or subscriber of an advisory organization may not interfere with the right of any insurer to establish its rates independently of that advisory organization or to charge rates different from the rates made by that advisory organization.

(5) Except as required by [section ~~7~~ 8], an advisory organization may not have or adopt any rule or exact any agreement or formulate or engage in any program that would require any member, subscriber, or other insurer to:

(a) adhere to its rates; or

(b) prevent any insurer from acting independently.

NEW SECTION. **Section 15. Advisory organization -- permitted activity.** An advisory organization may:

(1) develop statistical plans, including class definitions;

(2) collect statistical data from members, subscribers, or any other source;

(3) prepare and distribute pure premium rate data, adjusted for loss development and loss trending, in accordance with its statistical plan. The data and adjustments must be in sufficient detail to permit insurers to modify pure premiums based upon their own rating methods or interpretations of underlying data.

(4) prepare and distribute manuals for rating rules and rating schedules that do not contain any rules or schedules, including final rates, without information outside the manuals;

(5) distribute information that is filed with the commissioner and open to public inspection;

(6) conduct research and collect statistics in order to discover, identify, and classify information relating to causes or prevention of losses;

(7) prepare and file policy forms and endorsements and consult with members, subscribers, and others relative to their use and application;

(8) collect, compile, and distribute past and current prices of individual insurers, if the information is made available to the general public;

(9) conduct research and collect information to determine the impact of benefit level changes on pure premium rates;

(10) prepare and distribute rules and rating values for the uniform experience rating plan; and

(11) calculate and disseminate individual risk premium modification factors. INDIVIDUAL RISK PREMIUM MODIFICATION FACTORS MAY ONLY BE DISSEMINATED TO:

(A) A LICENSED PRODUCER OR A PLAN NO. 2 OR PLAN NO. 3 INSURER FOR THE BUSINESS OF INSURANCE ONLY; AND

(B) THE DEPARTMENT OF LABOR AND INDUSTRY FOR REGULATORY PURPOSES ONLY. INDIVIDUAL EMPLOYER PAYROLL AND LOSS INFORMATION MAY BE PROVIDED TO A PERSON OTHER THAN THE CURRENT LICENSED PRODUCER OR A PLAN NO. 2 OR PLAN NO. 3 INSURER ONLY AFTER OBTAINING THE EMPLOYER'S WRITTEN PERMISSION.

NEW SECTION. **Section 16. Advisory organization -- prohibited activity.** In addition to other

prohibitions in this part, except as specifically permitted under [section ~~14~~ 15], an advisory organization may not compile or distribute recommendations relating to rates that include expenses, other than loss adjustment expenses, or profit.

NEW SECTION. **Section 17. Penalties -- suspension of license.** (1) The commissioner may impose upon a person or organization that violates [sections 1 through ~~17~~ 18] a penalty of not more than $500 for each violation.

(2) If the commissioner determines that the violation is willful, the commissioner may impose a penalty of not more than $1,000 for each violation in addition to any other penalty provided by law.

(3) The commissioner may suspend the license of an ~~advisory~~ insurer or AN ADVISORY organization that fails to comply with any order within the time set by the order or extension granted by the commissioner. The commissioner may not suspend a license for failure to comply with an order until the time prescribed for appeal from the order has expired or, if appealed, until the order has been affirmed. The commissioner may determine the period of a suspension, which remains in effect for the period unless modified or rescinded or until the order upon which the suspension is based is modified, rescinded, or reversed.

(4) Unless a consent decree has been entered, a penalty may not be imposed nor may a license be suspended or revoked unless the commissioner, following a hearing, issues a written order with findings of fact. The hearing must be held at least 10 days after written notice to the person or organization specifying the alleged violation.

(5) A party aggrieved by an order or decision of the commissioner may, within 30 days after receiving the commissioner's notice, make a written request for a hearing.

NEW SECTION. **Section 18. Appeals from commissioner.** (1) An order, decision, or act of the commissioner under this part may be appealed to district court upon petition of a person aggrieved.

(2) A petition for review must be filed within 60 days from notice of the order, decision, or act. The commencement of the proceeding does not affect enforcement or validity of the commissioner's action unless the court determines, after notice to the commissioner, that a stay of enforcement until further direction of the court will not injure the interests of the public.

Section 19. Section 33-16-303, MCA, is amended to read:

"**33-16-303. Use of rates, rating systems, underwriting rules, and policy or bond forms of rating or advisory organizations -- agreements to adhere to.** (1) Members and subscribers of rating or advisory organizations may use the rates, rating systems, underwriting rules, or policy or bond forms of ~~such~~ those organizations, either consistently or intermittently, but, except as provided in 33-16-105, 33-16-302, 33-16-305, 33-16-307, and ~~33-16-1005 shall~~ [sections 1 through ~~17~~ 18], may not agree with each other or rating organizations or others to adhere ~~thereto~~ to the organizations' rates, systems, rules, policy, or bond forms.

(2) The fact that two or more admitted insurers, whether or not members or subscribers of a rating or advisory organization, use, either consistently or intermittently, the rates or rating systems made or adopted by a rating organization or the underwriting rules or policy or bond forms prepared by a rating or advisory organization ~~shall~~ is not ~~be~~ sufficient in itself to support a finding that an agreement ~~to go adhere~~ prohibited under subsection (1) exists and may be used only for the purpose of supplementing or explaining direct evidence of the existence of any ~~such~~ agreement."

SECTION 20. SECTION 33-16-403, MCA, IS AMENDED TO READ:

"**33-16-403. Examination of application and investigation of applicant -- issuance of license -- fee.** (1) The commissioner shall examine each application for license to act as a rating organization pursuant to this part or a workers' compensation advisory organization pursuant to part 10 and the documents filed ~~therewith~~ with the application and may make such further investigation of the applicant, its affairs, and its proposed plan of business as ~~he deems~~ the commissioner considers desirable.

(2) The commissioner shall issue the license applied for within 60 days of its filing ~~with him~~ if, from ~~such~~ the examination and investigation, ~~he~~ the commissioner is satisfied that:

(a) the business reputation of the applicant and its officers is good;

(b) the facilities of the applicant are adequate to enable it to furnish the services it proposes to furnish;

(c) the applicant and its proposed plan of operation conform to the requirements of this chapter.

(3) Otherwise, but only after hearing upon notice, the commissioner shall, in writing, deny the application and notify the applicant of ~~his~~ the decision and ~~his~~ the reasons therefor.

(4) The commissioner may grant an application in part only and issue a license to act as a rating

or workers' compensation advisory organization for one or more of the classes of insurance or subdivisions thereof or class of risk, or a part or combination thereof as are specified in the application, if the applicant qualifies for only a portion of the classes applied for.

(5) ~~Licenses~~ (a) Except as provided in subsection (5)(b), licenses issued pursuant to this section ~~shall~~ remain in effect until revoked as provided in this chapter. The fee for the license ~~shall be~~ is $100 annually ~~which shall~~ and must be deposited in the general fund.

(b) Each workers' compensation advisory organization is required to renew its license annually."

Section 21. Section 33-16-1002, MCA, is amended to read:

"**33-16-1002. Applicability of part.** This part, together and in conjunction with parts 1 through 4 of this chapter, applies to the making of premium rates for workers' compensation insurance issued under compensation plan No. 2 of the Workers' Compensation Act, Title 39, chapter 71, part 22, or related employer's liability insurance, but does not apply to reinsurance."

Section 22. Section 33-16-1011, MCA, is amended to read:

"**33-16-1011. Classification and rating committee -- membership -- term.** (1) There is a classification and rating committee.

(2) The committee is composed of five voting members, consisting of:

(a) two representatives of private insurance carriers writing workers' compensation insurance in Montana. The members must be appointed by the Montana commissioner of insurance.

(b) one licensed independent insurance producer who resides in Montana, appointed by the commissioner of insurance;

(c) one representative of the state compensation insurance fund who is an employee of the state fund and who is appointed by the executive director of the state fund; and

(d) one representative of an employer who is insured by either a private insurance carrier or the state compensation insurance fund, appointed by the commissioner of insurance.

(3) Each member shall hold office for a period of 3 years. An appointee who fills the vacancy of a member whose term has not expired shall fill only the remaining term and may be reappointed for a full term.

(4) Before appointments are to be made by the commissioner of insurance under subsections (2)(a),

(2)(b), and (2)(d), established private organizations representing insurance carriers, independent insurance producers, and employers may submit names of individuals they recommend for appointments. The commissioner of insurance shall give consideration to the names submitted before appointments are made. However, the commissioner of insurance is not required to appoint any person from the names submitted.

(5) The committee must be staffed by the ~~rating~~ advisory organization designated under [section 5] and be funded from the operations budget of the ~~rating~~ advisory organization. Committee members may, if they request, be paid their actual and necessary travel expenses.

(6) Documents and other information concerning the committee's actions must be made available for public review in the office of the commissioner of insurance."

Section 23. Section 33-16-1012, MCA, is amended to read:

"**33-16-1012. Functions and powers of classification and rating committee -- hearings -- rulemaking.** (1) The classification and rating committee shall:

(a) meet not less than semiannually to conduct its business;

(b) make the final determination regarding the establishment of all classifications;

~~(c) establish the advisory premium rates as provided for in 33-16-1006;~~

~~(d)~~(c) publish material and pamphlets as it considers appropriate;

~~(e)~~(d) act as a review committee concerning objections filed by employers in relation to classifications assigned to the employer by an insurer; and

~~(f)~~(e) make rules as may be necessary for the conduct of any business that is subject to notice and hearings. The rules must be published and adopted as provided in Title 2, chapter 4, part 3, and must be published in the Administrative Rules of Montana as part of the rules promulgated by the commissioner of insurance.

(2) (a) A hearing conducted by the committee pursuant to subsection ~~(1)(e)~~ (1)(d) must be an informal proceeding as provided in 2-4-604.

(b) A party aggrieved by a decision of the committee rendered after a hearing conducted pursuant to subsection (2)(a) may petition for judicial review of the decision pursuant to Title 2, chapter 4, part 7.

(3) The committee is subject to the provisions of Title 2, chapter 3, parts 1 and 2."

Section 24. Section 39-71-435, MCA, is amended to read:

"**39-71-435. Workers' compensation and employers' liability insurance -- optional deductibles.** (1) An insurer issuing a workers' compensation or an employer's liability insurance policy may offer to the policyholder, as part of the policy or by endorsement, optional deductibles for benefits payable under the policy consistent with the standards contained in subsection (3).

(2) ~~A rating~~ The advisory organization designated under [section 5] may develop and file a deductible plan or plans on behalf of its members consistent with the standards contained in subsection (3).

(3) The commissioner of insurance shall approve a deductible plan that is in accordance with the following standards:

(a) Claimants' rights are properly protected and claimants' benefits are paid without regard to the deductible.

(b) Premium reductions reflect the type and level of the deductible, consistent with accepted actuarial standards.

(c) Premium reductions for deductibles are determined before application of any experience modification, premium surcharge, or premium discount.

(d) Recognition is given to policyholder characteristics, including but not limited to size, financial capabilities, nature of activities, and number of employees.

(e) The policyholder is liable to the insurer for the deductible amount in regard to benefits paid for compensable claims.

(f) The insurer pays all of the deductible amount applicable to a compensable claim to the person or provider entitled to benefits and then seeks reimbursement from the policyholder for the applicable deductible amount.

(g) Failure by the policyholder to reimburse deductible amounts to the insurer is treated under the policy as nonpayment of premium.

(h) Losses subject to the deductible must be reported and recorded as losses for purposes of calculating rates for a policyholder on the same basis as losses under policies providing first dollar coverage.

(4) The state compensation insurance fund, plan No. 3, may adopt the plan filed by the DESIGNATED ~~rating~~ advisory organization or adopt an optional deductible plan that meets the requirements of this section.

(5) For purposes of 39-71-201, liability for assessments must be ascertained based on premiums

collected, in the case of policies written under plan No. 2, or on the assessment levied, in the case of policies written under plan No. 3, for which the policyholder would have been obligated without the deductible. For all other taxes and assessments based on premium, the amount of premium or assessment must be determined after application of the deductible."

Section 25. Section 39-71-2204, MCA, is amended to read:

"**39-71-2204. Insurer to submit notice of coverage within thirty days -- penalty for failure.** (1) The insurer shall, within 30 days after the issuance of the policy of workers' compensation insurance, submit to the department the notice of coverage stating the effective date of the policy insuring the employer and ~~such~~ other information ~~as~~ that may be required by the department.

(2) The department may:

(a) recognize the ~~national council on compensation insurance~~ advisory organization designated under [section 5] as an agent for authorized workers' compensation insurers in Montana; and

(b) under terms and conditions acceptable to the department, accept notice of coverage received from ~~the national council on compensation insurance~~ the advisory organization designated under [section 5] as the insurer's notice of coverage.

(3) The department may, in its discretion, assess a penalty of no more than $200 against an insurer that as a general business practice does not comply with the 30-day notice requirement set forth in subsection (1)."

Section 26. Section 39-71-2205, MCA, is amended to read:

"**39-71-2205. Policy in effect until canceled or replaced -- twenty-day notification of cancellation required -- penalty.** (1) The policy remains in effect until canceled, and cancellation may take effect only by written notice to the named insured and to the department at least 20 days prior to the date of cancellation. However, the policy terminates on the effective date of a replacement or succeeding workers' compensation insurance policy issued to the insured. Nothing in this section prevents an insurer from canceling a policy of workers' compensation insurance before a replacement policy is issued to the insured.

(2) The department may:

(a) recognize ~~the national council on compensation insurance~~ the advisory organization designated under [section 5] as an agent for authorized workers' compensation insurers in Montana; and

(b) under terms and conditions acceptable to the department, accept notice of cancellation received from ~~the national council on compensation insurance~~ the advisory organization, DESIGNATED UNDER [SECTION 5], as the insurer's notice of cancellation.

(3) (a) The department may assess a penalty of up to $200 against an insurer that does not comply with the notice requirement in subsection (1).

(b) An insurer may contest the penalty assessment in a hearing conducted according to department rules."

Section 27. Section 39-71-2211, MCA, is amended to read:

"**39-71-2211. Premium rates for construction industry -- filing required.** (1) With respect to each classification of risk in the construction industry under plan No. 2, the ~~rating organization described in 33-16-1005~~ advisory organization designated under [section 5] shall file with the commissioner of insurance a method of computing premiums that does not impose a higher insurance premium solely because of an employer's higher rate of wages paid.

(2) The commissioner shall accept a filing under subsection (1) that includes a reasonable method of recognizing differences in rates of pay. This method must use a credit scale with the starting point set at one and one-half times the Montana average weekly wage as reported by the department.

(3) The ~~rating~~ advisory organization shall file a revenue neutral plan for new and renewed policies ~~by July 1, 1992,~~ for prompt and orderly transition to a method of computing premiums that is in compliance with the requirements of this section.

(4) The state compensation insurance fund, plan No. 3, shall adopt the plan filed by the DESIGNATED ~~rating~~ advisory organization or adopt a credit scale plan that meets the requirements of this section."

Section 28. Section 39-71-2316, MCA, is amended to read:

"**39-71-2316. Powers of ~~the~~ state fund.** For the purposes of carrying out its functions, the state fund may:

(1) insure any employer for workers' compensation and occupational disease liability as the coverage is required by the laws of this state. The state fund may charge a minimum yearly premium to cover its administrative costs for coverage of a small employer.

(2) sue and be sued;

(3) except as provided in section 21, Chapter 4, Special Laws of May 1990, enter into contracts relating to the administration of the state fund, including claims management, servicing, and payment;

(4) collect and disburse money received;

(5) adopt classifications and charge premiums for the classifications so that the state fund will be neither more nor less than self-supporting. Premium rates for classifications may only be adopted and changed using a process, a procedure, formulas, and factors set forth in rules adopted under Title 2, chapter 4, parts 2 through 4. After ~~such~~ the rules have been adopted, the state fund need not follow the rulemaking provisions of Title 2, chapter 4, when changing classifications and premium rates. The contested case rights and provisions of Title 2, chapter 4, do not apply to an employer's classification or premium rate. The state fund ~~must~~ is required to belong to ~~the national council on compensation insurance~~ ~~the~~ A LICENSED WORKERS' COMPENSATION advisory organization ~~designated by the commissioner of insurance under [section 5]~~ OR A LICENSED WORKERS' COMPENSATION RATING ORGANIZATION UNDER TITLE 33, CHAPTER 16, PART 4, and ~~shall~~ may use the ~~classifications of employment~~ ~~uniform classification system and experience rating plan~~ CLASSIFICATIONS OF EMPLOYMENT adopted by the ~~national council and corresponding rates~~ DESIGNATED WORKERS' COMPENSATION advisory organization, AS PROVIDED IN TITLE 33, CHAPTER 16, PART 10, AND CORRESPONDING RATES as a basis for setting its own rates. EXCEPT AS PROVIDED IN TITLE 33, CHAPTER 16, PART 10, A WORKERS' COMPENSATION ADVISORY ORGANIZATION OR OTHER PERSON MAY NOT, WITHOUT FIRST OBTAINING THE WRITTEN PERMISSION OF THE EMPLOYER, USE, SELL, OR DISTRIBUTE AN EMPLOYER'S SPECIFIC PAYROLL OR LOSS INFORMATION, INCLUDING BUT NOT LIMITED TO EXPERIENCE MODIFICATION FACTORS.

(6) pay the amounts determined due under a policy of insurance issued by the state fund;

(7) hire personnel;

(8) declare dividends if there is an excess of assets over liabilities. However, dividends may not be paid until adequate actuarially determined reserves are set aside. If those reserves have been set aside, money that can be declared as a dividend must be transferred to the account created by 39-71-2321 for claims for injuries resulting from accidents that occurred before July 1, 1990, and used for the purposes of that account. After all claims funded by that account have been paid, dividends may be declared and paid to insureds.

(9) perform all functions and exercise all powers of a private insurance carrier that are necessary,

appropriate, or convenient for the administration of the state fund."

NEW SECTION. **Section 29. Repealer.** Sections 33-16-1004 and 33-16-1005, MCA, are repealed.

NEW SECTION. **Section 30. Coordination.** If [this act] is passed and approved and if it amends 39-71-2316, then Senate Bill No. 21 is void.

NEW SECTION. **Section 31. Codification instruction.** [Sections 1 through ~~17~~ 18] are intended to be codified as an integral part of Title 33, chapter 16, part 10, and the provisions of Title 33, chapter 16, part 10, apply to [sections 1 through ~~17~~ 18].

NEW SECTION. **Section 32. Saving clause.** [This act] does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before [the effective date of this act].

NEW SECTION. **Section 33. Severability.** If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

NEW SECTION. **Section 34. Applicability.** [This act] applies to rate filings by the advisory organization on or after [the effective date of this act] and to rates filed by insurers on or after the effective date of the advisory organization's initially approved loss cost filing.

-END-

MINUTES

MONTANA SENATE
54th LEGISLATURE - REGULAR SESSION

COMMITTEE ON LABOR & EMPLOYMENT RELATIONS

Call to Order: By **CHAIRMAN TOM KEATING**, on February 18, 1995, at 1:00 p.m.

ROLL CALL

Members Present:
Sen. Thomas F. Keating, Chairman (R)
Sen. Gary C. Aklestad, Vice Chairman (R)
Sen. C.A. Casey Emerson (R)
Sen. Sue Bartlett (D)
Sen. Fred R. Van Valkenburg (D)
Sen. Bill Wilson (D)

Members Excused:
Sen. Steve Benedict (R)
Sen. James H. "Jim" Burnett (R)
Sen. Larry L. Baer (R)

Members Absent: No members were absent.

Staff Present: Eddye McClure, Legislative Council
Mary Florence Erving, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing:	SB 348, SB 354, SB 384
Executive Action:	SB 348, SB 375, SB 354, SB 384, SB 374, SB 110

{Tape: One; Side: One}

HEARING ON SB 348

Opening Statement by Sponsor:

SENATOR LORENTS GROSFIELD, Big Timber, MT, SD 13, stated SB 348 deals with the tax Workers' Compensation insurers pay to fund the Department of Labor's budget. Specifically, the monies go for administrating the Work Comp program. All insurers pay the tax. For FY 95, the amount was approximately $4M. The Department sets the budget and passes on the cost to the insurers by levying the tax. There is no limit on the Department's budget and the increases are reflected on the increases of the tax. The amount reflects an unfunded mandate. The bill was intended to limit the

amount the legislature and Department can pass through to the insurers. It would limit the allowable, annual increase to 2%, and it would tap the amount that self insurers could be taxed. If the need is a budget of more than two percent, the monies would have to come from a different source. Hopefully a different source could be avoided. The fiscal note was delivered this date.

Proponents' Testimony:

Michael Keedy, Montana Schools Services Foundation, Helena, Mt, stated the Foundation administers the Workers' Compensation Risk Retention Program. **Mr. Keedy** stated the technical aspects to SB 348 are important. The Department of Labor and Industry oversees and administers Workers' Compensation and Occupational Disease Acts. In conjunction with Section 39-71-201, the only statute section addressed by SB 348, establishes a fund to cover the regulatory and administrative costs, borne by the Department in issuing the charges. Senate Bill 348 modifies section 202 in three key respects. Each modification would have an influence on the fund, but in somewhat different ways. On Page 1, line 25, subparagraph C, the beginnings of references to three separate plans that constitute the fund. Number one employer plan, are self-insurers. Plan Two Insurers are commercial carriers, and Plan Three is the State Fund. The State Fund is created and maintained, increased from time to time through tax assessment on each plan, levied. In the case of self insurers, the tax is levied on the gross annual payrolls, doled out by the entities represented by the self insured. It is the tax against self-insurers, is the topic of concern. Page one, line 16 and 19, currently reads that "the law requires that all costs of administration are to be paid through the tax assessment (subparagraph one, section 201). Currently, one half of the total payroll of the self insurer is generated by local government, cities, towns, counties, and school districts. So, half of the tax accessed against self insurers is paid by the three public entities. The school group program has over 230 school districts, employing approximately 2,500 Montanans for a gross annual payroll in excess of $430M. So, the Montana School Services Foundation has become the state's largest, Plan One Work Comp provider. Accordingly, the schools are the largest contributors to the cost payments. This has created two main problems, both are addressed in the bill. The first, there is no ceiling on the tax. The tax can and has escalated rapidly and fluctuated wildly from time to time. In fact, the tax has tripled since 1991. **Mr. Keedy** distributed handouts **(EXHIBIT 1)**.

Under the School Group Assessment column and from 1992 to 1995, the assessment jumped from $167 to $350, a substantial increase. From 1992 to 1992, the assessment increased by 45%; from 1992 to 1993, the assessment dropped by 20 %; from 1993 to 1994, the assessment jumped by over 100%; and from 1994 to 1995 the assessment fell by 3%. The tax means the Department's regulatory and administrative costs are passed directly through to local

governments, school districts, cities and towns, and counties. The process enable the Legislature to add to the programs and duties assigned to the Department, and expand their "empire" without independent statutory limitation. There is not real opportunity for the small, captive group of local taxpayers to protest. Equity is lacking in the current program. Unfunded mandates. There is little correlation between the costs borne by schools, relative to other Plan One carriers. There is little, if any correlation between the work load indicators attributed to schools. The assessment is paid by schools in relations either to other Plan One providers or all providers, as a group.

Senate Bill 348 makes three changes. It abandons the idea that the tax should be the exclusive form of funding for the Department's regulatory scheme. The tax may or not be exclusive funding, but if the collected taxes are insufficient, another revenue source must be found. This need should prompt the Legislature and the Department to exercise some fiscal restraint, currently absent. Secondly, SB 348 provides taps on premiums for payroll, at the level of $250M annually that can be assessed the tax. Last, SB 348 establishes a rate increase limitation from year to year of two percent, Page 1, line 25, reference to $250M and on Page 2, line 7, talks about information relative to the two percent capital on annual increases of easement rate. Senate Bill 348 increases the minimum payment from $200 to $1500, which means the current $200 minimum does not cover the Department calculating and assessing the tax. If there was an equitable portion of easement amongst providers, the foundation would not object to the present scheme. If there was a clear cut correlation between administrative and regulatory services offered by the Department and the costs imposed by the Department through the unlimited assessment opportunity, the foundation would not be concerned. Also, if the tax did not escalate by three digit percentages from one year to the next, and fluctuate wildly from time to time, the protest would not be made. **Mr. Keedy** urged passage of SB 348.

Debra Fulton, President of Montana School Board Association, Helena, Montana, stated she has served on the board of directors since 1990. The program exists to serve school boards and funds through cost control training and effective management. The Association needs to control Workers' Comp Losses, to improve workers' safety and to promote economic development in Montana. The Association's Workers' Compensation budget, the largest expense the principal has is developing reserves to cover future phase development. The second largest expense is governmental regulations. The program has assessed $346,000 to pay the governmental regulations. If the Association was a private insurance company, they would have to pay only $47,000, for the same regulation. **Ms. Fulton** stated the Association is an internal local government entity, and is paying more than private insurers. Eleven and one half percent of the total premium is for government regulations. They only pay 9.7% of the total premium to run the program. It costs more to regulate the

program than to run it. The Association has one claim for every $400,000 in premiums; cities and towns have one claim for every $124,000 in premiums. The Department of labor pays $323 per claim. The cities pay $100. **Ms. Fulton** urged the committee to uphold SB 348.

Opponents' Testimony:

Chuck Hunter, Department of Labor and Industry, stated the Department has budgetary concern over SB 348. It is somewhat strange to oppose SB 348 since, obviously, the Department of Labor and Industry is largely supported by the same legislation. **Mr. Hunter** explained how the system works. There is a statutory methodology for collecting the assessments. For Plan One Insurers, the assessment is based on the amount of payroll. Plan Two assessment is based on premiums collected . Plan Three, State Fund's costs are based on the amount of business transacted and on a premium basis. Every year, the Department goes through the process of preparing the budget, submitting the budget through Governor's office and the legislature. The bill is about changing the rules of assessment for only one player in the system. The school is the only Plan 1 entity that meets the statutory cap of the $250 million payroll. They are asking to pay less than their share of costs, based upon the payroll methodology. The change for the schools would be $140,000 reduction in the paid assessment. That charge would be passed along to other parts of the system. There are a couple ways that can happen. Basically, the assessment itself would be capped at 2%, and any increases above 2% would have to be appropriated by the legislature. The money would have to come from the General Fund, in the modeling cost trends over a long period of time, the General Fund's anticipated amount would have to come up with $300K to $400K on an annual basis to fund the amount of regulatory activity, above and beyond the 2% capital. The committee heard testimony about how the tax fluctuates wildly, that is not true. The amount the legislature has appropriated, and the Department can collect under the assessment are: Fiscal Year 1991, $3,100,000; FY 92, $3,168,000; FY 93, $3,262,000; and FY 94, $4,300,000. The million dollar jump between 1993 and 1994 was due to the 1993 Workers' Compensation package, which instituted many new regulatory programs, and are high jump in assessments. In FY 95, there was a $50.000 decrease in the assessment and the appropriation. Within the assessment, there is a possibility of individual insurers, Plan 1 and Plan 2 insurers, will go up or down. The figures are based on factors, since Plan 1 is payroll and Plan 2 is premium. One of the problems in this bill is that it caps people a 2% increase, even though their business volume may change dramatically. For example, when the school groups were approved to be self-insurers, their assessment for the first year was about $12,000. The assessment was based on the amount of payroll they came into the program. They had several months of business as Plan 1. The following year, the school, based on the amount of payroll increase and a full year in the system, the assessment was over

$100,000. The following year, when many, many more schools were added and payroll was almost doubled, the assessment was approximately $250,000. The bill would have a capped 2% increase, for every year on, if we had taken the original $12,000. Clearly the same thing applies to Plan 2 insurers. Plan 2 insurers could come in at $100,000, have the assessment capped at 2%, and come the next year and do $1M and be only assessed the 2% on the $100,000. Clearly, there is equity. The Department of Labor is aware of the regulation issue. People are concerned about cost. About six months ago, an advisory group was created from Plan 1 insurers, Plan 2 insurers and representatives from State Fund. The group was instructed to look at the process, assessment methodology, and regulatory programs. Do the regulatory programs have the right mix, or should the programs be changed, altered or added. The advisory group process will conclude in May. Any changes in the assessment methodology or the assessment should come out of a cooperative effort to make the system better.

Bob Worthington, Programs Administrator, Montana Municipal Insurance Authority, the organization that insures cities and towns across the state, and a member of the Assessment Advisory Task Force, stated he recognized the inequities of the assessment process. The authority had concerns over the increases in the past two years. The Assessment Advisory Task Force was formed in the fall (1994) to address increase concerns. The task force is looking to make the issues equitable. **Mr. Worthington** stated he has two concerns. As a MMIA representative, he is concerned about how the monies would be distributed and if there would be an inequitable effect to the MMIA and its assessments. The other concern is about SB 348. **Mr. Worthington** questioned if the legislation is a quick shot at trying to resolve the process, rather than looking at all the problems. The Assessment Committee Task Force is in the process of accessing the problems. Senate Bill 348 is premature. **Mr. Worthington** stated he would like to have the opportunity for the committee to resolve the issues by the end of May.

George Wood, Executive Secretary, Montana Self Insurers Association, stated the school group is not a member of the Montana Self Insurers Association. The association strongly opposes SB 348, a bill that transfers part of the costs from the assessment procedure, by statutes, to either the General Fund or other self insurers. The effect of capping the payroll at $250M represents a 42% decrease in the assessment for the school group and a 18% assessment increase for the other 60 self insurers in the state. The $1,500 cap mentioned is a unique cap. Presently, the cap is $200. The $1,500 is a 750% increase. The $200 is an assessment on the individual self insurers, and the amount is $1,500. If the 230 members are assessed $1,500 for each individual employer members of the group, they would pay $345,000. Their present assessment is $346,000. There are problems with the cap. If the cap remains, the proportionate share of the assessment against the other self insurers will

increase, the amount has to made up. **Mr. Wood** called the committee's attention to page 2, line 3. The language reads, "The assessments must be sufficient to fund the direct costs identified to the three plans..." The administrative fund used to come out of the General Fund. During the 1970s budget crunch, the self insurer changed to a user's fee. Since, the self insurers had disproportionate assessments. Originally, there were no groups, so the payroll figures were not high figures. The self insurers had companies, like Montana Power, Champion International, and Plum Creek. These companies had large payrolls in proportion to the other self insurers. Through the years the companies paid assessments, which could have been ten times what a company like Watkins and Shepard Trucking, Incorporated, Missoula, MT pays for a payroll around $5M. The association did not hear complaints about that. The assessment against Plan 1 and Plan 2 has been adequately discussed by **Mr. Hunter**. The 2% cap has problems. Last session, under objections by the Montana Self Insurers Association, the legislature placed a substantial increase in Departmental costs, regarding data collection in the Safety Culture bill. The increase for the self insurers was approximately $600,000. The 2% cap would shift some of cost from the self insurers to "some other" fund, possibly the General Fund. **Mr. Wood** stated the less the self insurers pay, the more the General Fund would have to pay. **Mr. Wood** stated he echoes **Mr. Worthington's** statement about assessment costs. The association has been concerned about costs accruing in the Department. The association belongs to the Task Force and hopes to determine which supervisory functions are necessary and which Department activities could be more efficient. The association hopes to make a substantial case when information is submitted in May. The association would not address the school's problem, of having to pay a disproportionate amount of Department cost. The Department funding is like other Workers' Compensation funding, it comes down to payroll against some type of assessments. The remark was made that if the school's premium was under Plan 2, they would pay "X" number of dollars. The schools forgot to say that Plan 2 carries have a 2.75% premium tax that goes into the General Fund. **Mr. Wood** urged the committee to table SB 384.

Jacqueline Lenmark, American Insurance Association, and speaking in behalf of Greg Van Horssen, State Farm Insurance, stated AIA opposes SB 348. **Ms. Lenmark** stated she is also a member of the task force, which is reviewing assessments, costs and the necessity of regulatory functions. The AIA's position is that the Task Force should be allowed to complete the work and make recommendations to the legislature. **Ms. Lenmark** stated the AIA opposes the bill for another reason. The legislation would have an effect on Plan 2 carriers who have come into the system after the law was enacted. The legislation would put Plan 2 companies in different positions, relative to one another. The legislature may deprive the state of Plan 2 carrier income because of the caps. Plan 2 carriers are currently increasing market shares. The current law needs to be left in place until the Task Force recommendations have been made.

Plan 1 schools saved by moving to self insured coverage, as opposed to Plan 3, State Fund coverage.

Howard Bailey, Administrator and Services Director for Workers' Compensation Program, Montana School Services Foundation, replied since 1989, the foundation has saved schools approximately $1.5M in premium based monies, which the State Fund would have charged.

SENATOR SUE BARTLETT asked how many districts belonged to the association when the school groups started, versus todays membership, and asked for payroll amounts. **Mr. Bailey** stated the program was developed in 1989. The Department of Labor agreed at that time to give the foundation serious consideration. The Foundation had $1M in premiums. It did not make any difference how many schools were involved in developing the premium. The foundation had approximate $1M worth of premiums and 55 members. Currently, there are 206 members, representing approximately 300 school districts. The premium, at this point, is $5.4M.

CHAIRMAN KEATING told **Mr. Hunter** that Plans 1, 2, and 3 should require everyone to pay a proportionate share of the assessed costs for delivering services. **CHAIRMAN KEATING** stated he is not familiar with the assessment formula, but asked why the assessments are not universal either by payroll, premium, or volume. **Mr. Hunter** replied Plan 1 does not have premiums, since Plan 1 are self insurers. Payroll has historically been the most readily available and accurate figures. Premiums have been used for both Plan 2 and Plan 3 membership. **Mr. Hunter** stated there has been (historic) discussion for finding data measurements that could be used between all three groups. To date, no agreements have been reached to produce easy, reliable, and verifiable numbers. **CHAIRMAN KEATING** said the one common denominator in all three plans is payroll. Each group would know how much payroll each is insuring. Payroll is the only unit of measurement for Plan 1. **CHAIRMAN KEATING** asked why payroll is not used for all three plans. The assessments could be based on the same factor. **CHAIRMAN KEATING** asked if the process would change the assessment amount for each group. **Mr. Hunter** admitted he could not assess the change issue, but would be willing to research the suggestion. **Mr. Hunter** explained other states ask for payroll data. The payroll data is then converted into premiums that would have been paid, if "they" had belonged to the State Fund. **CHAIRMAN KEATING** asked if the current formula is statutory, and can not be changed by rulemaking authority. **Mr. Hunter** stated the current formula is statutory. **CHAIRMAN KEATING** asked **Mr. Hunter** if the Department determines the assessment amount. **Mr. Hunter** replied the Department determines an annual accounting, workload statistic. The Department counts the amount of business completed for each claim, such as how many medications, claims paid, etc.

SENATOR EMERSON asked what are the differences between how programs are ran. According to earlier testimony, administrative costs, based on payroll, as opposed to another agencies's

CHAIRMAN KEATING asked the remaining opponents to state their names and affiliations for the record. There were no additional opponents.

Informational Testimony:

None.

Questions From Committee Members and Responses:

SENATOR EMERSON asked **Ms. Fulton** about the discrepancy between the schools and the cities. The schools are paying $320 while the cities are paying $100. **Ms. Fulton** stated the school pays by payroll, as do the cities. The difference is the size of the payroll, the cities have a much smaller payroll than the schools have.

SENATOR AKLESTAD asked **Mr. Hunter** if the legislation limits the cap to 2%, what has been the average increase, concerning past figures. **Mr. Hunter** replied the average increase has been in the area of 3% to 4%. If the 1993 changes are suspended, the increase has been 3% to 5%. **SENATOR AKLESTAD** stated the administrative costs appear high, are the costs currently being reduced. **Mr. Hunter** replied the costs are being looked at. Some of the costs are statutorily mandated, and do not yield a great deal of benefit to the system.

SENATOR AKLESTAD asked **Michael Keedy** about costs being passed on. The testimony was if the schools get "preferential treatment", would those costs be passed on. Those savings would be a cost to someone else. **SENATOR AKLESTAD** asked **Mr. Keedy** if he accepted that premise. **Mr. Keedy** replied he did not necessarily agree with the statement. The fact depends on Department operation costs. There is nothing inherent in SB 348 that calls for a tax shift to commercial carriers or to self insurers. **SENATOR AKLESTAD** asked if costs stay the same, would there probably be a cost shift, if overall costs were not reduced. **Mr. Keedy** stated there would be an assessment relief of $110,000 to the school group in the coming fiscal year, if SB 348 was enacted, as drafted. This would not necessarily shift the figure in terms of burden to other carriers in the system. The money, if needed by the Department, would have to be found elsewhere. This is the purpose of the bill, to call upon the legislature for relief. **SENATOR AKLESTAD** stated, if that is the case, the General Fund would have pick up the difference. **Mr. Keedy** stated he imagined so.

SENATOR VAN VALKENBURG asked **Mr. Keedy** if he provided the committee with an estimated amount of overall school savings. The difference between being covered by Plan 1 versus State Fund coverage or private carriers. **Mr. Keedy** stated he did not provide that information. **Howard Bailey** is the foundation director. Possibly, **Mr. Bailey** could provide the figures. **SENATOR VAN VALKENBURG** asked for an estimate concerning how much

statistic, was the jest of the discussion. **SENATOR EMERSON** asked about the regulation aspect. **Mr. Hunter** stated the Department's regulatory program is comprised of many activities, medication, claim resolutions, settlement approvals, attorney fee regulations, safety inspections, and statutory-mandated programs, etc. This information has to be provided to the insurers. The program is essentially a self insurance program for their own interest. There is a claim adjudication function, etc, since they perform as an insurance company. The Department does the regulatory part of the business.

SENATOR VAN VALKENBURG acknowledged **Mr. Keedy. Mr. Keedy** stated he misunderstood the question on savings and answered incorrectly. The correct information is $1.5M saving to members last year. Over the past three years, the savings were $4.1M.

Closing by Sponsor:

SENATOR LORENTS GROSFIELD expressed gratitude for an excellent hearing. The opponents agree there are status quo problems. There is shifting of funds from the state program back to the local level without much impact information being made available from the local level about funded budget amounts. School board administrative costs are high. The problems are real. Although the School Board Association is the largest Montana insurer, they are not represented in the Task Force Advisory Council.

HEARING ON SB 384

Opening Statement by Sponsor:

SENATOR STEVE BENEDICT, SD 30, Hamilton, MT stated SB 384 is important to Montana voters, as it is designed to refine the ground rules of a competitive market place where insurers operate with Workers' Compensation coverage. Senate Bill 384 is a must if the state monitors the market place to ensure the rates charged are not excessive, inadequate, or unfairly discriminatory. The act generally revised the Workers' Compensation insurance rating laws; provides definitions; provides for a determination of a competitive Workers' Compensation market; requires the Insurance Commissioner to designate an advisory organization; authorizes the filing and adoption by an insurer of an advisory organization's prospective loss costs; authorizes an insurer to file its own rates and supplementary rate information; provides for rate review; and eliminates the requirement that a rating organization file Workers' Compensation rates.

Proponents' Testimony:

Jacqueline Lenmark, American Insurance Association, stated SB 384 makes fundamental changes in current law for Plan 2 insurers. Currently, Workers' Compensation rates are made for the private

carriers. A rating organization, NCCI, takes data and produces a fully developed rate. Rate of loss information accounts for taxes, expenses, insurance company profit and etc. Each insurance company can use the advisory rate data or make deviations to produce individualized information. Senate Bill 384 changes current law to allow rating organization to file the cost of the actual Workers' Compensation losses with the Insurance Commissioner. The insurance companies develop their expenses from the loss information. So, "company A" can plan for personnel dollars, for premium tax, and allow for administrative cost, etc. Based on individualized information, a fully developed rate is produced. The benefits are: Each company takes a close look at available information, and language is based on NAIC model language. The NAIC is the National Association of Insurance Commissioners. The NAIC developed and approved the language in 1992, which has since been modified to reflect and meet regulatory statutes. The private carriers are regulated by the insurance commissions. There is no impact on the way State Fund does business, based on the rating provision of the bill. The bill does not effect how the State Fund develop their rates. The bill deals with how the Insurance Commissioner regulates Plan 2 companies and creates a competitive environment. State Fund amendments are distributed **(EXHIBIT 2).** The only substantive amendment is the way the State Fund would deal with rating organization Plan 2 carriers.

Ms. Lenmark explained the Insurance Commissioner designates the rating organization/advisory organization, which produces the loss development information. The organization would be the one all Plan 2 companies would be required to belong. It is imperative for Plan 2 companies and for the Insurance Commissioner to regulate, so they must have State Fund loss information. The State Fund would not be required to belong to the same advisory organization as the Plan 2 carriers. State Fund would be required to belong to a licensed organization and would be required to produce loss information to the organization designated by the insurance group. Substantive changes are referenced on page 9 of handout. SB 384 has liberal impact on the commissioner's office. **Ms. Lenmark** stated she has not yet seen the fiscal note, but cost is primarily associated with actuarial costs. The committee needs to clearly understand, if the law remains unamended, the Insurance Commissioner still need the actuary to regulate the insurance companies, under present statutes.

{Tape: One; Side: Two}

Ms. Lenmark stated she tried to prepare answers for anticipated questions, as well as to prepare a section by section summary. The numbers do not reflect the amendments and do not match the gray bill, the section numbers match the original bill. There is a two paragraph, brief summary, prepared by the American Insurance Association. Also included is a Department of Justice test. Senate Bill 384 should be good for Montana competition and

good for private carriers to increase business. **Ms. Lenmark** asked the committee for a DO PASS RECOMMENDATION.

Nancy Butler, General Counsel, State Fund, stated support of SB 384, with amendments. The fund supports the loss cost filing fee. The bill removes requirements for the State Fund to provide specifically to NCCI, and, instead, requires the fund to belong to the newly named Workers' Compensation Advisory Organization. The organization will be appointed by the Insurance Commissioner. Private insurers, Plan 2 are required to belong to the designated advisory organization. The bill, as originally introduced, required State Fund to belong to the designated provider organization. The State Fund will take advantage of the Workers' Compensation Advisory Organization option. The State Fund is not regulated by the Insurance Commissioner, but make their own regulations and use NCCI systems, etc,. NCCI membership cost of $400,000 has not been a concern. The State Fund understands the importance of data integrity. The State Fund will belong to a different rating organization. Senate Bill 384 addresses the privacy rights of individual policy holders. Experience modification factors can only be released to insurance producers and carriers for insurance purposes only. Individual information, regarding payroll and loss information, can be released only to the current carrier, unless specific permission is supplied, as required by law.

Opponents' Testimony:

None.

Informational Testimony:

Stan Kaleczyc stated NCCI also supports the gray bill, with amendments. Bills similar to this legislation have been adopted in 33 other states, and the District of Columbia. The bill has proven to be a pro-competition bill. The new way of filing advisory rates would allow consumers to know what various rates Plan two and State Fund may be charging for overhead and profit. Most importantly, with the amendments, the bill guarantees the integrity of that section and ensures the rate making process is efficient and effective. The information would come from all insurers, including Plan 2 and Plan 3, to the designated carrier so the filed rates with the Insurance Commissioner would truly reflect the costs of providing Workers' Compensation benefits. The data would be based on loses in the state.

Frank Cote, Deputy Insurance Commissioner, State Auditor Department, stated support of SB 384. The bill helps create a more competitive market place for Workers' Compensation Insurance. The Insurance Commissioner regulates Plan 2 and private Work Comp carriers, but do not regulate the State Fund or self insurers. Senate Bill 384 allows private carriers to file and use rates. They have to stick to information prescribed by a rating organization. Legislation allows for more competitive

rates, as long as the rates are not excessive, inadequate or unfairly discriminatory. It has been the commissioner's view, that competition should be fostered in the work place. The state does not have an actuary to review Work Comp filings, the appropriation subcommittee removed the Departments actuary. The current rates for an actuary on a consultant basis are about $275 an hour. Hiring a staff actuary would prove to be more cost effective.

Questions From Committee Members and Responses:

SENATOR EMERSON asked, if rates determine the competition, why does the Insurance Commissioner determine the rating. **Ms. Lenmark** stated the Insurance Commissioner only determines rates when an uncompetitive market has been determined. **Ms. Lenmark** stated the reason the particular language is in the bill is for antitrust consideration and market protection, if one company takes an monopolistic share of the market. If that situation does not occur, each individual company decides what they will charge for Workers' Compensation. They file and use the rate they have determined. The Insurance Commissioner does not determine the charge. **Ms. Lenmark** stated there could be other factors creating a noncompetitive market. The bill sets out a number of tests the Insurance Commissioner must use, if the market has been determined to be a noncompetitive market. The market is presumed to be competitive for baseline purposes. There would have to be a dramatic shift in the market place before the Commissioner would adjust rates.

SENATOR VAN VALKENBURG asked **Mr. Bailey**, if the bill becomes law, what would the Department do if it does not get an actuary or contractual services. **Mr. Bailey** stated the Department is in a catch 22 situation. If the law passes or fails, without an actuarial or contracted service requirement, the Department is in trouble. The state needs an actuary.

CHAIRMAN KEATING stated the commissioner does not regulate the State Fund. The State Fund, in another bill, wanted out from under NCCI's rating. **CHAIRMAN KEATING** asked if State Fund and Plan 2 are currently under the NCCI rating organization. Yes. **CHAIRMAN KEATING** asked about SB 384. Can Plan 2 form some other rating organization and not be subject to NCCI. **Mr. Kaleczyc** referenced the Gray Bill and replied that there will be a licensed advisory organization, licensed by the Insurance Commissioner. Currently, that is NCCI. It could also be one or more other organizations that may come into the state. More likely than not, the organization could into existence in the future. The Insurance Commissioner will pick one to be the designated organization. Now, for all practical purposes, it means NCCI. NCCI must take the market place risk. Under the Gray Bill, there is no requirement that State Fund belongs to the designated advisory organization. If the State Fund chooses to go to a different organization, State Fund is still required to provide necessary data to the designated organization. The

organization designated can do advisory rate making, contemplated in the statutes. Significant discussions with State Fund and AIA found the solution workable. The data integrity will be protected under the bill as amended and will still provide the option or flexibility State Fund seeks. **CHAIRMAN KEATING** stated concern: The bill is written to stimulate competition. **CHAIRMAN KEATING** stated that he does not want to give one player an edge over another player. He does not want to have one person exempt from something other person is bound. That is unfair competition. **CHAIRMAN KEATING** asked for assurance that the proposed amendments do not give such advantage. **Mr. Kaleczyc** stated he does not believe an unfair, competitive advantage exists. The NCCI, or whoever the designated organization will be, will give pure loss estimates about various class code costs and about the premiums that should be charged. Then, AIA and independent Plan 2 carriers will file taxes, overhead and profits with the Insurance Commissioner. The amounts may be 10%, 15%, or 20%. So, the potential Worker's Compensation purchasers of Plan 2, knows that company "A" has a 10% overhead; company "B" has a 12% overhead; and company "C" has a 9% overhead. The State Fund does not have to make the same filing with the Insurance Commissioner because it is not regulated. It would be easy under the bill for customers to say : For class code abc, the advisory organization rate is $1.70 per 100; the State Fund, in their privately published rates, is $1.80. The customer can go to a Plan 2 carrier and surmise a 12% margin, and then compare the two rates. No one gets a competitive edge one over the other. The only person to really get a competitive edge is the consumer.

CHAIRMAN KEATING asked if the rating organization has authority over MOD factoring, so MODS cannot be manipulated? **Mr. Kaleczyc** stated Plan 2 carriers, required to belong to the designated rating organizations, all follow the same formula, which is the NCCI formula for calculating modification factors. State Fund has a slight formula deviation. So anyone insured by the State Fund uses a formula that is similar, but not identical. Whether the entity is insured by Sigma or Liberty, the mod factor would be calculated in the same way. The State Fund is consistent in calculations and MOD factors, and the information is published.

Closing by Sponsor:

SENATOR BENEDICT stated before he closed, he wanted to tell the committee there are amendments to offer to **SENATOR HARP's** bill. SB 374 is brought into the same configuration as SB 384. In terms of the rating organization, the State Fund and other entities would belong to the advisory organization. The same amendments are for SB 375 and SB 384. **SENATOR BENEDICT** thanked the committee, and stated SB 384 is important to the Workers' Compensation Insurance competitive workplace.

{Tape: One; Side: Page 2}

HEARING ON SB 354

Opening Statement by Sponsor:

SENATOR GARY FORRESTER, SD 8, stated SB 354 originated from extensive research and answers a lot of questions, such as Workers' Compensation emerging issues, independent contractors, contractor licensing, and employee leasing issues. An interim committee was established by HJR 33 to address emerging issues expected to be raised in the 1995 Legislative session. The subcommittee seized the educational opportunity to learn about the problems, hear the requests, listen to testimony from interested persons; and to encourage solutions. **SENATOR FORRESTER** stated he participated in the study. He is also an independent contractor. Cost will be the price of regulation within the industry, although the cost is not excessive. The HJR produced data that reported 90 percent of the industry's problems are the independent contractor's problems. **SENATOR FORRESTER** stated, even though he did not vote for the 1993, HB 470 legislation, he did not just say "no". The legislation is almost identical to the Washington State legislation. **SENATOR FORRESTER** stated he worked on SB 354 for many hours and worked with every interested person or group he could. Although, some people would say they are not satisfied. **SENATOR FORRESTER** stated he wanted the committee to understand he would continue to work hard in order to make SB 354 work. Senate Bill 354 is the first step.

Proponents' Testimony:

Jim Kembel, representing the city of Billings, stated the city received numerous independent contractor's complaints regarding shoddy and unsatisfactory workmanship, especially in times of hail storm disasters. Customers were damaged severely by the new contractors in town for the hail storm damage business. The contractor may or may not have been properly qualified. The cost of correcting the problems cost thousands of dollars. Senate Bill 354 many not be the total solution, but it is a start in the right direction. In the future, the legislature should look at training programs and licensing measures. Perhaps a licensing board similar to the plumbing and electrical boards would be appropriate. At the very least, the legislature should start now, before it is too late **(EXHIBIT 3)**.

Former Representative Jerry Driscoll, representing Montana Building and Production Trades Council, Billings, MT, stated support for SB 354. Since 1977, there has been legislation to correct the independent contractors problems. Each session has made a little bit of progress, but this session should produce legislative results and move closer to solving the problems.

David Owen, Montana Chamber of Commerce, Helena, MT, stated the Chamber does not have a lot of home builder members, but the Chamber represents approximately 800 businesses that have "paid

through the nose" for Workers' Compensation Insurance. Many members have supported past legislation. Since, costs have gone up, and more rules have been inflicted to correct problems in other areas. The independent contractors problem has been one area that appeared to be elusive. On behalf of businesses paying high rates for Workers' Compensation Insurance, something must be done. **Mr. Owen** encouraged the committee to start the solution process.

Darrell Holzer, MT State AFL-CIO, stated SB 354 is a definite step in the right direction. The cost factors to meet the requirements are minimal. The only people who could be opposed to the legislation are the "bad people", who made the legislation necessary in the first place.

George Wood, Executive Director, Montana Self Insurers Association, stated support for the legislation. The association members think SB 354 is a good first step in getting a handle on the independent contractor problem. **Mr. Wood** encouraged the committee to pass SB 354.

Mr. Charles Brooks, representing the Montana Food distributors Association, Independent Grocers and their suppliers, stated the association members employ contractors to build entire building complexes and to remodel existing structures. Association members think that **SENATOR FORRESTER'S** legislation is the place to start solving the independent contractors problems. **Mr. Brooks** described a personal situation involving an independent contractor. Although the main contractor assured **Mr. Brooks** that everyone working to remodel his recreational home was covered under Workers' Compensation Insurance, that was not the case. A subcontractor fell off the roof and **Mr. Brooks** received a call from the Workers' Compensation Division, wanting policy information. Fortunately, the main contractor had proper coverage, and the subcontractor was included under the contractor's policy, but legal fees incurred. Senate Bill 384 would work to correct such problems; therefore, the legislation takes a step in the right direction. **Mr. Brooks** urged the committee to pass SB 354.

Jacqueline Lenmark, representing the American Insurance Association and representing Greg Van Horssen, State Farm Insurance, expressed thanks to **SENATOR FORRESTER** for presenting SB 354 for corrective action. **Ms. Lenmark** urged the committee to pass SB 354.

Chuck Hunter, Department of Labor and Industry, stated conceptual support for SB 354. There are many independent contractor problems that have been around for years. The numbers are increasing and the problems are getting worse. For example, in 1994, the Department received almost 1,900 plus exemption applications. The figure is in contrast to earlier data: In 1990, 500; in 1991, 600; in 1992, 1,000, and in 1994, 1,500. Currently, in the uninsured program there are 255 construction

related cases, and 89 are cases involving independent contractor issues. The underinsurance program has 269 active cases, and 58 have independent contractor issues, involving $48K in outstanding penalties. The independent contractor issues are two fold, the exemption process and the contractors, who may be independent contractors, but are not independent contractor exempt. The rules that apply in both cases are very much alike. The independent contractor has to pass the "AB" test; be free from the direction and control of the employer working board; and be independently established as a pre-occupational business. The process is a paper process, and people learn to submit the "right" answers to get exemption status. The Department acknowledged positive concepts, which have been outlined in the SB 354 legislation. The annual registration process, making registration a yearly event, rather than an exemption that lasts forever. There are meaningful requirements to enter the program, such as fees and bonds. Field enforcement is a positive step, since many independent contractors related problems exist for a short period of time only. The problems are reviewed/seen after the fact. The problems cannot be corrected while they are taking place. The Department of Labor suggested the complicated enforcement process be made less complicated and easier to enforce.

Vernon R. Zickefoose, Independent Contractor, Billings, MT, stated he is primarily a subcontractor dealing with other contractors and the public, but acknowledged worth in SB 384. **Mr. Zickefoose** urged the committee to support SB 354.

Sheldon Eaton, Eaton And Yost Construction, Billings, MT offered written support of SB 354 **(EXHIBIT 4)**.

Scott Myers, President of Myers Custom Homes, Inc., offered written support of SB 354 **(EXHIBIT 5)**.

Will Suralski, Mid Valley Drywall, offered written support of SB 354 **(EXHIBIT 6)**.

Charles Dyle, Dyle Construction Co, offered written support of SB 354 **(EXHIBIT 7)**.

Gerald Seeley and Don Hunter, Concrete Construction Company, Billings, MT, offered written support of SB 354 **(EXHIBIT 8)**.

James F. Haar, President, High Tech Construction, Billings, MT, offered written support of SB 354 **(EXHIBIT 9)**.

S. Kummerfeldt Construction, Billings MT, offered written support and concerns about SB 354 **(EXHIBIT 10)**.

Fred Stevenson, Prestige Homes, Billings, MT, offered written support of SB 354 **(EXHIBIT 11)**.

Kraig Kincaid, Kincaid Drywall, Billings, MT, offered written support of SB 354 **(EXHIBIT 12)**.

Al Schaff, Air Controls Heating, Air Conditioning and Refrigeration, Bozeman, Billings, and Livingston, MT, offered written support of SB 354 **(EXHIBIT 13)**.

Butch Bailey, Bailey Masonry, Inc, Billings, MT, offered written support of SB 354 **(EXHIBIT 14)**.

Star Service, Inc, Mechanical Contractors, Billings, MT, offered written support of SB 354 **(EXHIBIT 15)**.

Richard A. Miller, Rich's Modern Flooring, Billings, MT, offered written support of SB 354 **(EXHIBIT 16)**.

Opponents' Testimony:

Chris Racicot, Executive Officer, Montana Building Industry Association, Helena, MT, stated for the committee's benefit, it was necessary to clarify the difference between registration and a licensed program. The difference is the competency requirements. Entrance exams and continuing education requirements are necessary for a licensing program. The concept of licensing and registration has merit, if done properly. The proposed legislation has not addressed the issue properly, nor has it had the input from the independent contractor industry, in any manner. SB 354 has been touted as the answer to the existing independent contractor Workers' Compensation issues. The construction industry has been completely precluded from the bill development process. Only one person in Montana had input into the Washington-based law deliberations. If the issue was about public health or safety, the legislation would still be inappropriate. The bill was introduced one week ago and afforded the industry members only a short period of time to review. **Mr. Racicot** stated "un-involvement" is not a good way to form public policy, especially since the Washington based law is severely flawed. **Mr. Racicot** read correspondence from the Washington Building Industry Association's Executive Director. **Mr. Tom McCabe** wrote, "Today, after 25 years with this law and many amendments, over 30 percent of the contractors are not registered. Over 30% of the claims, filed in the construction industry, come from employees of unregistered contractors. Registered contractors pay premiums, that are 30% too high." Senate Bill 354 would penalize legitimate people, unless there is a "policeman" on every single construction site. From an enforcement perspective, the Department will not financially be able to review all independent contractors. The concept of licensing and registration is not new to the building industry, especially not new to the MBIA. The MBIA has commissioned a state wide licensing committee, with representatives from local chapters, to study the issue. They have been cooperating with other interested organizations. The organizations include MT Contractors Association, the Assurity Industry of MT, the

Departments of Commerce and Labor, State Fund, and city and local governments. The issue demands time and deliberations because of the complicated and detailed issues. Montana industries must be part of the process **(EXHIBITS 17 & 18).**

Mr. Racicot stated in reference to the title, SB 384 does not address the independent contractor exemption issue in any way, except for in the title. In fact, SB 354 may create a conflict within the law, under the new section 4. The location of the program is another issue. The legislation proposes to locate the program in the Department of Labor; however, the administrative government agency needs to be a pro-business agency, familiar with professional occupational licensing, administration and enforcement. The Professional Occupational Licensing Division (POL) is familiar with licensing, and the division is set up for the administrative, legal, investigative and enforcement challenges necessary. Section 3 and 15 are also areas of concern. The only way to enforce the two sections is through the office of the county attorney. The association members do not believe the Labor Department would be a successful route of enforcement. The POL boards have experience, but only a very small percent of offenders get prosecuted.

Mr. Racicot stated if the legislation is routed through the administrative hearing process in the Attorney Generals Office, and the Attorney General's office act on behalf of the Department of Labor as hearing examiners, the number of cases would severely tie up the Justice Legal Service Division. Cost would be approximately $43 per hour, or approximately $2,000 for just the hearing examiners per case. The assurity bond "carrot" would have the public's interest, and they , in turn, would be sure to pursue the assurity aspect. Senate Bill 354 is an administrative nightmare. Each registrant would have to renew at different times per year, rather than the Department having one renewal date, with a grace period. To illustrate, one contractor would be good for a year, another contractor, might have a bond good for six months, but the fee requirement would be the same for an entire year. The section that sets issuance, renewal and registration monies, derives $50 per contractor, for an estimated $400,000. The amount is far below what effective enforcement would cost. Senate Bill 354 does not combine or abolish the present public contractor license program, which is an excise tax. The tax is responsible for putting $255,000 into the General Fund annually. Senate Bill 354 does not address the public education program to teach people about their responsibilities when they deal with the construction industry.

Mr. Racicot explained the MBIA have produced a consumer based publication to inform about public responsibility. Senate Bill 354 does not protect the public, only educates. Texas, along with 18 states do not have licensing programs or regulations; yet those states function without legislation. Most problems between consumer and the construction industry are the big contract problems. It will be difficult to protect consumer from

unprofessional business practice when the public is unwilling to educate and protect themselves. Education is necessary. Senate Bill 384 opens the door for more regulations but does not protect the legitimate operator or consumer. It makes no sense in an era of less regulated government and less spending to impose another useless program on an industry, without input. The bill makes everybody have to have Workers' Compensation Insurance. If there are problems with the Workers' Compensation System, specifically address those problems, but do not blanket the whole industry with registration without input. The association is not opposed to regulations. Ongoing discussion on such issues have been a reality. The industry membership wants to be part of the policy dialogue. Dialogue needs to be done outside the legislature, not during the heat of a session, with only one week to cut a deal before transmittal. Problems are not with current law, problems are with noncompliance. It is difficult to do anything with contractors who do not comply with the law. **Mr. Racicot** urged the committee to defeat SB 354.

Stan Helgeson, home builder, President of MT Building Industries Association, Billings, MT, stated the association represents approximately one thousand businesses in the housing and light construction industry. Association members do not support SB 384 for a number of reasons. The bill is confusing, at best, and for the short time allotted, it would not be feasible to "make" the bill workable. **Mr. Helgeson** thanks **SENATOR FORRESTER** for bringing the issue to the forefront. The MBIA generally favors some form of licensing/registration. The association have taken steps to develop an adequate and fair licensing and registration program. To develop a correct program, time is needed. Members intend to work with MBIA, other interested people, and legislators to develop and ready proposals for the next session. The first time members viewed the bill was Monday, this week. **Mr. Helgeson** stated he viewed the legislation as a nuisance bill, one that legitimate contractors will have to comply with, but will receive little or no benefits. In the field discussions, contractors generally favor licensing, if it is done right and it means something. Legitimate contractors are in favor of consumer protection; They know if one contractor defrauds the public, the whole industry suffers. **Mr. Helgeson** asked the committee to oppose the entire bill and let the building industry and other construction leaders to develop a more comprehensive and equitable program.

Mr. Helgeson stated **Mr. Kembel** gave earlier testimony which alluded to favorable legislation. That is not the case. **Mr. Helgeson** stated he had a conversation with Billings City Building Department officials, as well as the Public Works Director. They are not in favor, but will work with association members to produce a more comprehensive bill. Another conversation with the Executive Director of the Billings Chamber of Commerce was not favorable.

Bob Durand, Montana Building Industry Association, reported he has a 24 year affiliation with the construction industry and is a licensed contract bonds person, currently working as a business consultant, stated he reviewed the assurity issue at **Mr. Racicot's** request. The general purpose of the law is to afford public protection from unreliable, fraudulent, financially irresponsible or incompetent contractors. Assurity bonds mean protection. Section 5 calls for a bond, $6,000 for general contractors, and $4,000 for specialty trades. Section 13 references contracts from $1K to $60K, but does not reference contracts in excess of $60K. **Mr. Durand** stated the language is misleading. There is only one $6K bond, and even if that bond was raised to a higher level; the bill was enacted and all was approved for the construction, the bond would not be effective or reliable. All projects would be at risk, and all of the contractor's previous customers would be at risk, if a claim against the single $6K was submitted. **Mr. Durand** submitted written testimony, which supported his verbal testimony **(EXHIBIT 19)**. In addition, the $4K requirement for hail storm damage is deficient. Any out-of-state contractor can enter the state and complete approximately 20 to 30 hail damage jobs, but there would only be one $4K bond. The higher the bond penalty is another nebulous situation. There are assurity companies who would consider the $4K to be the construction licensing and permit bond amount. In addition, there is a second bond requirement. There are two bonds per contractor. The second contract is to protect the employee. The bond requirements will have bonding companies spend more time underwriting. The language talks about assurity must be listed in the suit. Washington state law had a set amount for major contracts in the blanket proponent fund, which was difficult to rid. **Mr. Durand** stated a contract licensing program is needed, but is premature. **Mr. Durand** stated he does not have the luxury of making final decisions in his business without doing all the homework. He suggested the legislature gather assurity information from surrounding states, including Oregon and Washington. Input is critical. Homework is essential

David Cogley, Builder, Helena, MT, stated SB 384 has been taunted as the first step solution for independent contractors. As the bill reads, registration requirement is to show proof of Workers' Compensation Insurance coverage. There are other provisions of Workers' Compensation laws that provide exemptions. There are certain kinds of exemptions for people depending on how business is done, such as sole proprietor, independent contractor, and so forth. It was not **SENATOR FORRESTER'S** intent that the exemptions be precluded by SB 354. **Mr. Cogley** stated he is going to offer an amendment to clarify that the contractors only need to prove the class of Workers' Compensation Law and compliance with unemployment insurance law. That it, the contractors will either show coverage or show exempt status.

Bill Pierce, Home Builder, Helena, MT, stated opposition to SB 354.

Andy Skinner, licensed home builder for 30 years, stated verbatim, "The consumers can't be protected by laws, like we are trying to do. This is a legal thing that is in the contract. You can't make a level playing field, as the bill says, you upset the checks and balances."

Tim Dean, Building Contractor, Bozeman, MT stated opposition to SB 354.

Myles M. Egan, Billings Association of Realtors, stated opposition to SB 354.

Jeff Engel, Home Builder, Billings, MT stated opposition to SB 354.

Bob Ross, Building Contractor, Kalispell, MT, stated opposition to SB 354 in the current form.

Stan Helgeson, President of Home Builders Association, Billings, MT, stated that the association opposes SB 354.

Darwin Nisson, Dynamark Security Center, a security arm insulation, a highly regulated business and assurity bonded, stated opposition to SB 354.

Gay A. Rye, Executive Officer, Home Builders Association, Billings, MT, stated the 165 membership is strongly opposed to SB 354 **(EXHIBIT 20).**

Pat Ford, Home Builder, Helena, MT, urged opposition to SB 354.

Hardy Edmonson, Vice-president Building Association, Bozeman , MT. stated opposition to SB 354.

John Agnew, Western States Insurance, Bigfork, MT, offered written testimony against SB 354 **(EXHIBIT 21).**

<u>Questions From Committee Members and Responses</u>:

There were no questions from the committee.

<u>Closing by Sponsor</u>:

SENATOR FORRESTER told the committee that it is amazing that the independent contractors have been "excluded". **SENATOR FORRESTER** stated **Chris Racicot's** name had been "excluded'. **SENATOR FORRESTER** stated **Chris Racicot's** name has been included in correspondence. (**SENATOR FORRESTER** held up documents in front of the committee so they could see the actual correspondence.) **SENATOR FORRESTER** wanted to know how **Chris Racicot** was excluded. **SENATOR FORRESTER** stated he received a letter from **Chris Racicot** two weeks ago, before the bill came out to say Chris Racicot was totally opposed to the bill. That is when **Mr. Racicot** became "opposed" to the legislation. **SENATOR FORRESTER** stated he talked

with **Stan Helgeson**, although he testified, he and others were left out. **SENATOR FORRESTER** stated he met with **Carl Schweitzer, Greg Hardy**, and five or six other Billings people at the Sheraton Hotel. Jeff Angles was at the Sheraton, yet he and the others claimed to be left out. They said they wanted "left in the loop", and two weeks later they send **SENATOR FORRESTER** a letter stating they want out, not only are they going to oppose the bill, but they are strongly opposed to the bill, without reading it. **SENATOR FORRESTER** stated he is part of the industry, and "ready Proud" that the opponents "really wanted to work with me." **SENATOR FORRESTER** stated he worked with the Chamber of Commerce and attended meetings, as well as other meetings. The MBIA has nerve to testify that **SENATOR FORRESTER** didn't work with the Independent contractors. **SENATOR FORRESTER** stated he could not believe the testimony stating cooperation was not offered on either side.

The Association discussed the issue with the Department of Labor. Senate Bill 354 is not a licensing bill. The registration will be handled in the Department of Labor. If the Association is a problem with the Department of Labor, it is a Governor's Department, just like the Commerce Department. The Governor appoints both directors. **SENATOR FORRESTER** stated he has nothing to do with the directorship appointments. **SENATOR FORRESTER** stated he asked **Chuck Hunter, Department of Labor**, yesterday what exactly was the problem. Chuck Hunter replied that he had no realization of the problem. Evidently, the Association did not what the Department of Labor, but wanted the Department of Commerce. **SENATOR FORRESTER** stated the Commerce Department would be fine, and would be amicable to working with the Department, if they wanted to come back at another time. **SENATOR FORRESTER** stated the problem cannot go on. It has been going on for fifteen years. Yet, the association wants another two years. They say give them another two years, and they will return to the legislature with a proposal. They have wasted three weeks of the session, already. They wasted the time by not submitting any input. **SENATOR FORRESTER** stated he actively solicited input. **SENATOR FORRESTER** stated he cannot make sense of MIBA's Attorney General argument. If the fiscal impact had been several hundred thousand dollars, **Mr. Dave Lewis, Budget Director,** would have identified and questioned that amount of money.

The Washington version of SB 354 has been in statute and amended several times. **SENATOR FORRESTER** said he wanted to quote something about the construction industry. He said, in fact, SENATOR HARP stated in the report **(EXHIBIT 20)** that there are no wilder, more independent entrepreneur spirit found anywhere else, than in the construction industry. He maintained that SENATOR HARP had said last summer, "to try to regulate internally, is possible." They have to bring in a third party. SENATOR HARP has been interested in Worker's Compensation forever. Since he has been in the legislature, he has been interested in Workers' Compensation issues. **SENATOR FORRESTER** stated he is angry to have to address the committee in such a

demeanor, that people have accused him of not working with them. The bill is a result of many hours, at least 50 meetings with people wanting input. **SENATOR FORRESTER** stated he worked with the League of Cities and Towns. He removed the language "cities and towns are held liable, if they do not check on the building permit without being encumbered." ...**SENATOR FORRESTER** stated he removed language after he worked with newspaper people and discussed the Washington Bill. The newspaper people said if you advertise in a newspaper and accept an advertisement, the newspaper is guilty. **SENATOR FORRESTER** stated he is willing to work with people and take unwanted language out of the bill, but is not willing to accept accusations of not working together.

Senate Bill 354 is a first step. **SENATOR FORRESTER** called the committee's attention to the Washington MBIA pamphlet **(EXHIBIT 22)**. The pamphlet states: "in order for any program to be of value, there needs to be a number of aspects in place to assure that this is not merely another excise tax, similar to the public contract licensing program. One of these areas is the license application process. The following is a sample for an application process that could take place before any general or specialty contractor who could legally have the ability to bid and accept private and public constructions jobs. Annual applications submitted by February 1. The fees commensurable to the costs of the program for a federal specialty contractors.

SENATOR FORRESTER stated the annual proof of liability insurance is not in the bill, but the annual application is. Insurance industry people said they did not like the language, so the language was taken out. The proof of employment insurance Workers' Compensation coverage was an issue, so the exemption language was put in. The annual license card was not included. Homeowners came in two years ago and testified. The idea of a card was rejected. A certificate would suffice. **SENATOR FORRESTER** stated he really thought he could work with these people and come together with amendments to make the legislation work, but the first step is necessary, or in two years, the problems will be the same. If the contractors think that MBIA can work for two years and bring a bill to the legislature for unanimous approval, it is not possible. There will be last minute deadlines anytime a bill of this magnitude is brought to the legislature. There are 29 new sections in the bill. **Chuck Hunter** stated he would work to further SB 354.

CHAIRMAN KEATING stated the Labor Committee will adjourn and will meet for Executive Action upon adjournment. The committee will take Executive Action some time today and interested people should return and be available discussion. **CHAIRMAN KEATING** stated he is hesitant to make a statement, but will make a statement for the record. What the committee and the audience witnessed during the hearing was a heated battle between two groups. **SENATOR KEATING** stated to his knowledge, the substance of the bill was never addressed. He stated he did not hear any particulars regarding the specifics of the bill, only that it was

a good bill and only that it was a bad bill. No one elaborated on what the bill would do. During Executive Action, there will be give and take. **SENATOR KEATING** stated he hoped the emotions would be held down, and people would talk with sense and logic. The committee needs to thoroughly understand the proposed legislation. **CHAIRMAN KEATING** stated, in his opinion, the Independent Contractor Bill is absolutely necessary for the coverage of Workers' Compensation for the worker and home owner protection when they hire an independent contractor. There has been too much past abuse, something must be worked out, and done. The meeting was adjourned, until the call of the CHAIR.

The Labor and Employment Relations Committee returned to Room 413/415 at 5:48 P.M.

The meeting was called back to order by CHAIRMAN TOM KEATING. SENATOR CASEY EMERSON was excused.

EXECUTIVE ACTION ON SB 348

Discussion:

Senate Bill 348 was sponsored by **SENATOR GROSFIELD**, trying to cap the assessment on Plan 1, for the school districts. There are no amendments.

Motion:

SENATOR AKLESTAD moved to table SB 348.

Discussion:

CHAIRMAN KEATING asked if anyone from the State Fund, Plan 1 and Plan 2. **CHAIRMAN KEATING** stated, for the record, during the testimony it was apparent that the school self-insure plan is one of the largest bodies in the Plan 1 area. They are not represented on the advisory council or on the council that establishes the rates, rules, etc. **CHAIRMAN KEATING** suggested the committee take note of the fact the self insured school are not on the council. If at some point, that larger group could get representation, it would lead to a settlement. The committee should also be aware of the fact the formula needs to be revisited so everyone is on the same page in regards to establishing rates from some common base.

Vote:

The motion to table SB 348 CARRIED UNANIMOUSLY. SENATOR EMERSON submitted a "Table" vote.

EXECUTIVE ACTION ON SB 375

Motion:

SENATOR BENEDICT moved SB 375 DO PASS.

Discussion:

SENATOR BARTLETT stated she would like to note for the record that she is severely disappointed in the State Fund for bringing major, major pieces of legislation to the legislative session at such a late date. **SENATOR BARTLETT** stated she would remind the committee members who were in the 1993 Legislative Session and the new 1995 members that Workers' Compensation was a major 1993 issue. All bills went through a Select House Committee, the House Labor committee, a Select Senate committee, and though Senate Labor and Employment Relations committee. The process was coordinated. In contrast, the legislature has had no coordination of State Fund legislation this session. If this is a sample of what the legislature has been led to believe to be improved State Fund administration, there is a tremendous amount of improvement that has yet to be realized. **SENATOR BARTLETT** stated she is very disappointed in the State Fund for the timing on the amendments. **SENATOR BARTLETT** stated the disappointment is something she will not forget.

SENATOR BENEDICT responded stating SB 375 is his bill, not the State Fund's bill. The draft of SB 375 was submitted to the AFL-CIO on December 10, 1994. The legislature has worked through the process. The only reason SB 375 is as late in the session as it is that he, **SENATOR BENEDICT**, tried to bend over backwards to get absolutely everybody that wanted an opportunity to have some "finger prints" on the bill, that opportunity. Finally, on about February 3rd or 4th, we finished getting comments and started sifting. We put together a bill that tried to address as many concerns as possible. **SENATOR BENEDICT** stated he really does not believe the State Fund had anything to do with the lateness of the bill. **SENATOR BENEDICT** stated he would like to go on record of saying the State Fund has done an absolutely great job of coming along in the last couple of years.

SENATOR VAN VALKENBURG replied that he was sure **SENATOR BENEDICT** did his best to try to reach out to everyone he thought would be interest in SB 375, but not everyone was included, including himself. **SENATOR VAN VALKENBURG** stated he doesn't converse daily with the AFL-CIO, but he had not heard anything about SB 375 until two days before it was heard in committee. **SENATOR VAN VALKENBURG** stated he want to make the point that in his opinion the payroll tax on employees would have never passed last session were it not for the efforts of Democrats in the Senate to try to really do something to solve a significant problem. **SENATOR VAN VALKENBURG** maintained that if he had known in 1993 that the 1995 Session would have a bill that just cut benefits like SB 375 does, the Democratic effort would never had happened, not at all.

SENATOR WILSON stated he would agree with both **SENATORS BARTLETT AND VAN VALKENBURG's** assessments. He remembers the 1993 scars of compromise. **SENATOR BURNETT** stated he was in the 1973 Session when the New Constitution implemented payroll taxes. The assembly was controlled by the Democrats and there was a Democratic Governor. The unions, in tandem with the Democrats slipped everything through.

Vote:

The DO PASS motion for SB 375 PASSED. A roll call vote was taken, with SENATORS BARTLETT, VAN VALKENBURG And WILSON voting NO.

EXECUTIVE ACTION ON SB 354

Discussion:

Ms. McClure stated she distributed the Forrester amendment to the committee members. **(EXHIBIT 23). Ms. McClure** remarked that **SENATOR FORRESTER** stated to her that the amendments are just the first of a few amendments that the committee and he could agree on. When the bill goes to the floor, there may be other amendments. The amendment deals with issues commonly brought up in testimony. **J. Lenmark** proposed the amendment, and **SENATOR FORRESTER** wanted the amendment changed. One page 3, clarification is made for proof of compliance with Workers' Compensation laws, rather than coverage. They want proof of compliance with unemployment insurance laws. Washington State calls their agents "statutory agents", and Montana calls the agents, "registered agents", and the agents are required. So, the amendment strikes "statutory' and "if any,". **SENATOR FORRESTER** stated information was brought forward in the fiscal note. The limited liability companies also had to be addressed and that function was taken care of in amendment, number 4. The last amendment is on page 4, line 12. **Mr. David Cooley** suggested the phrase "or any applicable exemption terminates" is inserted following the word "expires". The certificate is valid until the date the insurance expires "or any applicable exemption terminates". To make it perfectly clear with amendments 1 and 2, that the independent contractors' exemption would be received.

Motion/Vote:

SENATOR BENEDICT moved to AMEND SB 354, 35401. The amendments were approved by SENATOR FORRESTER.

Vote:

The motion to amend SB 354 CARRIED UNANIMOUSLY.

Discussion:

SENATOR BENEDICT stated he listened to the bill's presentation and a lot of strident discussion. **SENATOR BENEDICT** stated he had talked with **SENATOR FORRESTER** as well as members of the contractor's industry. **SENATOR BENEDICT** stated he was mystified why the sides could not get together, as they both appeared to be going in the same direction. It was difficult to ascertain what they did not like about the bill, other than it was not the independent contractor's bill. **SENATOR BENEDICT** stated he would like to offer a conceptual amendment, on page 4, line 29, to bring the license fee up to $70, rather than $50, and make sure there is enough money in the Special Revenue Account for the license fees. He would also like to make sure no General Fund money in used. If the $70 is not needed for administration, the fund will build up. The change, if needed, could be made under rule making authority, or they could come to the 1997 Session and request additional funding.

Motion:

SENATOR BENEDICT moved to amend SB 354. Page 4, line 29, strike "$50" and insert "$70". **Ms. McClure** stated she would research the bill to find out if the change has to be make in any other place in the bill.

Discussion:

CHAIRMAN KEATING asked if the bill specifies where the money is supposed to go. **SENATOR BENEDICT** stated the language says the "money must be deposited under the State's Special Revenue Account to the credit of the Department of Administration.... The bill is very specific. **SENATOR VAN VALKENBURG** asked what makes the committee think that $50 is not enough, how was the conclusion reached? **SENATOR BENEDICT** stated he reviewed the fiscal note. There are about 8,000 contractors in Montana, based on the Department of Commerce's data. Fifty dollars in fees is not adequate to cover the cost of the program, especially if all penalties approved to the General Fund. The Department recommends that the registrations fees be increased to $70, which would be enough revenue to cover the program, based on the assumption there are 8,000 contractors.

Vote:

The MOTION to AMEND SB 354 CARRIED, with SENATORS AKLESTAD and WILSON voting NO.

Motion:

SENATOR BENEDICT moved SB 354 DO PASS AS AMENDED.

Discussion:

SENATOR AKLESTAD stated what concerns him is that the proponents are very willing to assess a fee. Now the fee has been raised $20. In most cases, but not all cases, the fee will be on someone else. **SENATOR AKLESTAD** stated he does not know if he agrees with the procedure. There are many disgruntled people and much animosity between the factions because there have not been more proposed agreements. **SENATOR AKLESTAD** questioned the legislation's completeness. **SENATOR BENEDICT** stated he agreed with **SENATOR AKLESTAD. SENATOR BENEDICT** stated he read the proposals in the contractors' newsletters, and the proposals went further than the amendment. The contractors do not disagree. The proposal is not theirs, and that is why they disagree. The proposal includes licensing and registration, creates a bigger bureaucracy, and has a lot more rule making authority.

CHAIRMAN KEATING stated the reason he left SB 110 become dormant was to find a better way to legislate the problem. **CHAIRMAN KEATING** stated he tried to protect small employers who were getting stabbed in the back. Those "stabbers" were filing as exempt independent contractors. They would change their minds and "do the stabbing". The testimony demonstrated there are a lot of bucks out there, and they are "hitting" the small employers. The committee heard testimony from a home owner who had gotten clobbered. **CHAIRMAN KEATING** stated that something has to be done to slow down the mess. Senate Bill 354 moves in the correct directions. The committee heard from independent contractors who were in favor of the legislation. **SENATOR KEATING** stated $50 to $70 is not a reason to question the purpose of the bill. There is plenty of time for people to work out problems. The bill needs to be refined and adjusted. People who want to be independent contractors will have to provide for their own liability. They will not be able to "stick" someone else. This is the purpose of the legislation.

SENATOR VAN VALKENBURG asked how the bill applies to a contractor who does not have employees, but works only on his/her own. **SENATOR FORRESTER,** replied that each independent contractor would register with the Department of Labor, and would have to declare whether they would be covered under State Fund or if they would seek an exempted independent contractor status. At that point, they would furnish a bond to the Department of Labor and would declare up to two recognized trades. The Department of Labor would issue the AB test. **SENATOR VAN VALKENBURG** asked about a carpenter who build decks, does that person have to register? **SENATOR FORRESTER** said one section applies to the "the brother-in-law built" deck. A causal-manner work description is used for work done under the policy holder insurance, and the contract is not needed. The brother-in-law, under existing law, is in the business of building deck, would have to register, etc. **SENATOR VAN VALKENBURG** stated he tended to agree that there ought to be state agency responsibility, rather than county attorney based

responsibility. **SENATOR VAN VALKENBURG** stated he will work with **SENATOR FORRESTER** and others to hone SB 354.

Vote:

The DO PASS AS AMENDED motion for SB 354 PASSED with SENATORS BAER, EMERSON and AKLESTAD voting NO.

EXECUTIVE ACTION ON SB 384

Discussion:

Ms. McClure stated the amendment goes along with the Gray Bill **(EXHIBIT 23)**. **CHAIRMAN KEATING** stated the starting point for SB 384 is the Gray Bill.

Motion/Vote:

SENATOR BENEDICT moved to AMEND SB 384 (38401) (EXHIBIT 24).

Discussion:

Ms. McClure explained SB 384 and SB 374 addresses some of the questions raised in committee by proponents and opponents, primarily to coordinate the two bills. The amendments do not change the substance of the bill. There is an amendment on both bills, 39712316. As introduced, the amendments conflicted. The amendments now match. The language talks about a designated advisory organization. In SB 374, a rating organization was acknowledged. Page 9, sub 1, the Gray Bill says "everyone is required to be a member of licensed, advisory organization or a licensed rating organization. Testimony on SB 374 talked about optional membership by the State Fund. So, 39712316 would look the same in both bills. "Advisory" will be deleted to include rating, and it will be designated.

Page 19 of the Gray Bill, the amendment originated by **SENATOR HARP's** concern about who can get a copy of loss records, Amendment 15. The amendments are bolded and capped. Designated people, only, get the information. Permission must be obtained for the businessperson **CHAIRMAN KEATING** asked who can get the payroll and loss run information. **Ms. Lenmark** stated the only entities who can get the information without getting permission are a licensed producer, which is the insurance agent, or a Plan 2 carrier, or a Plan 3 carrier without the State Fund. Anyone else would have to get written permission.

Page 20 dealt with the "an advisory" insertion. Page 22 brought in a new section, Section 19. Part 4 will be a rating organization if Part 4 is applicable. It will be an "advisory organization" if Part 10 is applicable, upon codification. The underlined information is existing law. **CHAIRMAN KEATING** asked **Mr. Kaleczyc** how the rating organization setup will work and who is subject to what. **Mr. Kaleczyc** replied each year under the

proposed legislation, the NCCI or anyone else, who has an advisory organization, rating organization and does Work Comp rating, would have to apply to the Insurance Commissioner and pay a $100 specified fee. The Insurance Commissioner requires certain criteria. The criteria is itemized on page 22 and 23 of the Gray Bill. The Insurance Commissioner designates the entity that meets the Workers' Compensation Advisory Organization criteria. Previously, the organization was called a rating or advisory organization; and historically, the two terms were used interchangeably. **Mr. Kaleczyc** explained the following scenario. Assume, there are two licensed advisory organizations, the NCCI and "XYZ". The Insurance Commissioner would designate one or the other to receive all the classification and grading information to establish the advisory rates. Designated organization would be required to file the advisory rates with the Insurance Commissioner. Advisory rates would be the loss rates under this legislation. Then, each Plan 2 Carrier would file, and information concerning overhead, taxes and profits etc. would be included. Individual Plan 2 carriers would be required to submit such information. **CHAIRMAN KEATING** asked if the rates are set at non-specific dollar amounts, or are the rate set within code ranges, so the insurer would pick the dollar amount. No, there is a specific dollar amount. For example, code "ABC" will have a rate $1.00 per hundred. Under the legislation, Plan 2 carrier would submit figures for overhead and profits. The Plan 2 amounts could vary. For the sake of example, the percentages could come in at 20% or 18%. Now, the consumer Work Comp business could say that one Plan 2 group has a 20% overhead and the other has an 18% overhead. That amount would be attached to the basic $1.00 per hundred rate, so the respective charge would be $1.20 and $1.18. Knowing this information the prospective customer can call the private insurance carrier and the State Fund and compare prices. Knowing the amount, a call to the State Fund would find out their amount for the class code rate. The consumer would then compare private insurance carrier rates with the State Fund and make a business decision. **CHAIRMAN KEATING** asked if the advisory organization would establish a fair rate for coverage. **Mr. Kaleczyc** stated the fair rate is based on actual loss experience. **CHAIRMAN KEATING** stated the insurers can deviate from that amount depending on their overhead, costs, and the competitive level they want to achieve, called competition in the market place. **Mr. Kaleczyc** stated under existing law, Plan 2 insurers can file Insurance Commissioner DVL advisory organization rates. The big difference was, when NCCI filed the rates, they took a composite average of all the overhead costs. In the future there will be the actual loss experience cost presented by each company The actuarial will drive the determination of the advisory organization with regards to the Montana rates. The NCCI actuarial use the rates. That was why it was important to work out acceptable language concerning Plan 2 carriers, NCCI and the State Fund. So, even if the State Fund did not belong to the designated organization, the designated organization get would get the State Fund loss information. The actuarial rates need to reflect what is really happening.

CHAIRMAN KEATING stated, the composite actuarial information is what determines where Montana ranks in the rate list, whether Montana is high, low, or within competition with surrounding states. Instead of using just State Fund actuarial information, NCCI can now set rates using private carrier experience information. If the private carriers have lower experience, the figures can help to being down Montana's overall rate. **Mr. Kaleczyc** stated that is what is currently happening. NCCI takes the loss gathered from the State Fund, AIA members, and a few companies, who do not belong to the AIA or any other associations. The difference is, when NCCI currently produces that information, NCCI inputs the average overhead. So the rate gathered and filed with the Insurance Commissioner reflects pure losses, but it averages the State Fund plan 2 overhead costs. Rather than deal with averages, the new way will not average the overhead costs. The figure will be exactly what the cost was by class codes, concerning injuries, losses, etc. This is the big difference between the new legislation and the old statutes. The new system will produce "clarified" information using pure loss information. Consequently, the pure actuarial costs would be calculated and used to benefit future legislation. The information would be reflected over time for actual advisory rate publications.

From page 29 to 31, the word advisory is inserted, as necessary. The last big amendment is 2316. Existing law required the State Fund to belong to NCCI. Under the proposed legislation, State Fund will belong to a licensed Workers' Comp advisory or a licensed rating organization. The State Fund has to belong to one or the other. The last amendment deals with who can buy the information. The information can be sold, but first Rick Hill's permission must be obtained. Except as provided in Title 33, Chapter 16, Part 10, a Workers' Compensation advisory organization or other person may not without first obtaining the written permission of the employer, use, sell, or distribute an employers' specific payroll or loss information, including but not limited to experience modification factors. There is a coordination instruction on page 32 of the Gray Bill **(EXHIBIT 25)**. If the act passes and if the act amended 39-71-2316, then SB 21 is void. The bill has already gone to the Governor's office. The reason the SB 21 would be voided is because of an 1993 enrollment error, stating the fund needs to belong NCCI.

SENATOR BARTLETT asked **Mr. Swanson** about the amendment on page 1, amendment 7, which stated the State Fund is required to belong one or the other organization. How will the amendment effect State Fund. **Mr. Swanson** deferred the question to Nancy Butler. **Ms. Butler** stated the amendment clarifies what State Fund is currently doing.

{Tape: Two; Side: One: Extreme Static and background noise}

SENATOR BARTLETT noted for the records a reminder to all the insurers. The 1993 Legislative Session approved a data base

system that is essential for a standardized information system. that having specified working with the task on the data bases system that was approved in the 1993 session. It is absolutely essential from **SENATOR BARTLETT'S** point of view that classification of employment codes are elements that need to be standardized, so the data base information is compatible with nation wide information systems.

Vote:

CHAIRMAN KEATING stated the amendment has been moved. The committee is finishing with amendment questions. **The motion to amend SB 384 CARRIED UNANIMOUSLY.**

Motion:

CHAIRMAN KEATING stated the bill with the amendment is being considered. **The DO PASS AS AMENDED motion for SB 384.**

Discussion:

SENATOR VAN VALKENBURG stated the main reason for the bill is to make the State Fund more attractive to employers because employers will be able to find out there is a more competitive environment for Plan 2 offerings. When this happens, there will inevitably some loss of Plan 3 market share. The committee has discussed the problems the loss of market share creates for Plan 3. **SENATOR VAN VALKENBURG** asked **Mr. Swanson** to comment on loss of market share created problem. **SENATOR VAN VALKENBURG** stated he does not want to hear later that SB 384 created a tremendous market share loss for Plan 3 that was not anticipated. **Mr. Swanson** stated the State Fund was writing 70% of premiums at the beginning of the fiscal year. We lost a certain amount of market share, but the fact we were writing so much, really talks about the healthy compensation climate. It is healthy that business is back in the state. The bill is a healthy bill. It addresses loss experience cost, which basically the State Fund is already doing. State Fund operating expense goes into the current year's rate making information.

Vote:

The motion of SB 384 DO PASS AS AMENDED PASSED UNANIMOUSLY. SENATOR EMERSON VOTED YES.

EXECUTIVE ACTION ON SB 374

Discussion:

SENATOR BENEDICT stated 37401 amendment is two pages long **(see EXHIBIT 26)**. A handwritten Gray Bill was distributed to help make the amendments easier to follow. The thrust of the amendment does two thing. One, they coordinated with SB 384, which was just passed. The language is the same concerning the advisory

rating, as the language in **SENATOR HARP's** bill. There was a committee concern about the default remaining unsatisfied. Page two, line 14 rectifies the problem. It reads " The State Fund is required to issue or insure any employer in the state that requests coverage and if they refuse to provide coverage, unless an employer or employers principals have defaulted on a State Fund obligation, and the default remains unsatisfied." . The amendments bring the same language into the bill, that was passed in SB 384, about the rating advisory organization. They make one small change to say it "remains in default". **Ms. McClure** talked about line 22. If someone wanted to make sure the liability insurance provided was related. The language was not narrow enough, so the word "by related employment" was entered on line 22.

Motion/Vote:

SENATOR BENEDICT moved to AMEND SB 374. The motion on the Harp amendment passed with SENATOR WILSON VOTING NO.

Motion:

SENATOR BENEDICT stated the amendment takes care of concerns that some people have about the State Fund selling or being in a competitive environment with the private companies selling their services. It is a conceptual amendment: Page 2, line 27, following "public", strike "or private". The effect is to say that if State Fund is going to sell services, they can only sell the services to public entities". This takes the State Fund out of competition with private companies. **CHAIRMAN KEATING** asked if the private carriers can offer services to public entities. **Ms. Lenmark** stated the private carriers could only be offering these kinds of services, typically, to those they are insuring. There are other private companies, not insurance companies, who also offer these services and offer them to public entities. **CHAIRMAN KEATING** asked about the Helena claimant who thought the State Fund should not be competing with private companies because State Fund has an advantage. **SENATOR KEATING** stated the concern was that the State Fund would go out and start competing in the private market. The claimant's concern was not about the public market. **SENATOR AKLESTAD** asked if he could have an example of the private insurance. **Rick Hill, Chairman State Fund**, stated the State Fund currently offers insurance to groups of private businesses. The State Fund contracts with associations to provide coverage to the groups for some of the services the State Fund would normally enter into with individual insurers, through the group, which is a private entity. The State Fund have been approached by some individual who are currently self-insuring, and may be interested in returning to the State Fund. These people have concern about how their previous claims might be administered if they switch from self-insurance groups or plans. The State Fund would like to be able to handle such services. The amendment would restrict the State Fund from being able to

offer this arrangement to public entities and would not be able to offer it to private entities.

Vote:

The motion to accept the conceptual amendment to the Harp amendment on SB 374 passed with SENATORS KEATING AND AKLESTAD voting NO.

Motion:

SENATOR BENEDICT moved to amend the amended amendment.

Discussion:

CHAIRMAN KEATING asked about page 2, starting on line 22. The language says, "in addition to charging a premium the State Fund may assess a policy charge on each policy issued in order to cover its administrative costs". **CHAIRMAN KEATING** stated it sounds to him that the State Fund can charge a premium and also put a surcharge on for administrative costs. **CHAIRMAN KEATING** stated he does not see any private carriers charging a premium and adding a surcharge for administrative costs. The action may or may not drive business away from the State Fund, but the legislature is giving the State Fund additional edge for charges. State Fund can say that their premium is this amount, but then they add the administrative costs. **Carl Swanson** stated currently small business are charged a minimum premium of $ 494. The charge involved 6,700 or 32% of the customers. The legislation proposes to eliminate the minimum premium and coming up with a policy charge which would be $95 or less for all insurers. The amount would be charged to all policy holders because there is a cost to servicing each policy. This will help most of the small businesses. Over all, the large policy holders' rate is not competitive with Plan 2. There may be a future loss of business.

SENATOR VAN VALKENBURG stated the committee heard SB 348 earlier. What is the administrative cost. **Mr. Swanson** stated in the insurance company most private carriers charge a minimum premium. Most State Funds have a minimum premium and charge a rate that is between an expense constant and a premium/risk factor. The amount is approximately $750, so the Montana charge is significantly less, and for a difference purpose. This bill would reduce the small businesses in Montana by $194 off the cost of the vast majority of businesses. The amount that would be charged is about $95. **SENATOR VAN VALKENBURG** stated this 39-71-201 statutes talks about an administration fund. Then there is the desire to assess a policy charge to cover administrative costs. **SENATOR VAN VALKENBURG** stated both the administration fund and the administrative costs sounds the same. **Mr. Swanson** stated SB 348 is a Department of Labor Bill and is for administrative assessment. **SENATOR BARTLETT** further explained the two charges are completely different. One charge is for Department of Labor's functions and is a fee that the State Fund

pays. The other charge is State Fund's charge to the policy holders for administering the policy.

{Tape: Two; Side: One}

Vote:

The motion of **SB 374 DO PASS AS AMENDED.** A roll call vote was taken with **SENATORS BARTLETT, EMERSON, VAN VALKENBURG AND WILSON** voting NO.

Motion:

SENATOR BENEDICT asked to move to reconsider the action of the SB 374 for purposes of amendment.

Vote:

The motion passed with SENATOR WILSON voting NO.

Discussion:

SENATOR BENEDICT stated SB 374 is an important bill with some good language. If it would help the bill, he would offer to strike section 1, which basically put it back that is section 3, subsection 1, lines 19-23. In section 3, sub. 1, strike the entire sub. one, and renumber subsequent sections. We are striking lines 10-23, the changes. It will put everything back to the original minimal premium. Hopefully the amendment will help pass the bill.

The motion to restore section 3, subsection 1, to the current statutory language. **SENATOR AKLESTAD** said he agreed with the amendment. The bill is important and needs to be discussed on the floor.

Vote:

The motion to Amend SB 374 CARRIED. SENATOR WILSON and BARTLETT VOTING NO.

Ms. McClure asked for clarification. Is the xing out the coverage of related liability insurance, the whole sub 1, back to the original language. **SENATOR BENEDICT** stated he want to leave the language in the bill. What **SENATOR BENEDICT** want to address was the minimum premium. Take the sentence out that begins "The State Fund... through administrative costs". **CHAIRMAN KEATING** asked if the discussion changed anyone's vote. **SENATOR AKLESTAD** stated the amount went back to the minimum.

SENATOR VAN VALKENBURG stated he is still concerned about the subsection 4 provision about the sales of services to public entities. It is his understanding that the reason the State Fund wants this ability is because there are apparently some former

Plan 3 customers who have decided to go out on their own. Now they have changed their minds and want to come back to State Fund under the Plan 3. State Fund does not know how to deal with the claims filed while they were out. That is no reason to have the State Fund go out and start selling safety consultation services. **SENATOR VAN VALKENBURG** stated he is not sure about the collection or charges or premiums. The State Fund really needs is the authority to adjust and settle claims. The State Fund does not have to be in the business of competing with private businesses that are providing safety consultations services. **SENATOR BENEDICT** stated he struck "or private entities" out of the bill for the very reason. So, State Fund could consult with the Department of state governments or other governments to help them in their safety programs. **SENATOR VAN VALKENBURG** asked a hypothetical question. If Missoula County has a contract with ABC Safety Consulting, the change will mean the State Fund can now propose to provide safety consultation to Missoula County. This would potentially undercut the private company. **CHAIRMAN KEATING** asked if the state already has the obligation to provide a safety program upon request. **Mr. Hunter** stated under the Safety Culture Act, the state has a responsibility to provide safety consultations. The state does have a safety program, but those are primarily for public entities. **CHAIRMAN KEATING** stated the State Fund will be competing with the state safety program. **SENATOR BENEDICT** asked **Carl Swanson** to elaborate. **Mr. Swanson** explained State Fund is currently supplying safety consultation services to the State of Montana. One of the areas is the Department of Labor Uninsured Fund. Other Departments may find occasions for services at some point in time through State Fund to access into the information system. The claims management, protection and prevention programs, etc. would benefit.

SENATOR BENEDICT stated the 1993 Legislature asked the State Fund to start operating like a business, and to utilize services and available tools. The system will be up and running in approximately two years, but authority is needed to plan for the future. **Mr. Swanson** stated, as President of the State Fund, he feels the ability to sell is significant, since the State Fund is attempting to run the Department like an insurance company. The various components of the bill are necessary for the State Fund to be an efficient business. State Fund has lost $3M worth of business in 1995. To enhance financial stability, many state funds are moving in the same efficient direction.

SENATOR BARTLETT asked if the individual safety consultation companies sell the safety services to entities, other than those entities they insure. **Ms. Lenmark** replied yes. Blue Cross Blue Shield sells claims management service, while they are not the insurer involved. Blue Cross Blue Shield (BC/BS) sells under the state self insured medical program. **SENATOR SUE BARTLETT** clarified the answer. Since Blue Cross Blue Shield handles several lines of insurance. Workers' Compensation is only one line of insurance that BC/BS sell.

Vote:

The motion SB 374 DO PASS AS AMENDED CARRIED. A roll call vote was taken. SENATORS BARTLETT, VAN VALKENBURG, and WILSON voting NO.

EXECUTIVE ACTION ON SB 110

Motion/Vote:

SENATOR BILL WILSON moved to TABLE SB 110. The motion CARRIED UNANIMOUSLY.

ADJOURNMENT

Adjournment: The meeting was adjourned at 6:43 p.m.

SENATOR TOM KEATING, Chairman

MARY FLORENCE ERVING, Secretary

TK/mfe

MONTANA SENATE
1995 LEGISLATURE
LABOR AND EMPLOYMENT RELATIONS COMMITTEE

ROLL CALL DATE February 18, 1995

NAME	PRESENT	ABSENT	EXCUSED
LARRY BAER	✓		
SUE BARTLETT	✓		
STEVE BENEDICT	✓		
JIM BURNETT	✓		
CASEY EMERSON	✓		
FRED VAN VALKENBURG	✓		
BILL WILSON	✓		
GARY AKLESTAD, VICE CHAIRMAN	✓		
TOM KEATING, CHAIRMAN	✓		

SEN:1995
wp.rollcall.man
CS-09

MONTANA SENATE
1995 LEGISLATURE
LABOR AND EMPLOYMENT RELATIONS COMMITTEE
ROLL CALL VOTE

DATE 2-18-95 BILL NO. SB 374 NUMBER

MOTION: SB 374 Do Pass As Amended

NAME	AYE	NO
LARRY BAER	★	
SUE BARTLETT		★
STEVE BENEDICT	★	
JIM BURNETT	★	
CASEY EMERSON		★
FRED VAN VALKENBURG		★
BILL WILSON		★
GARY AKLESTAD, VICE CHAIRMAN	★	
TOM KEATING, CHAIRMAN	★	
	5	4

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CS-11

SENATE LABOR & EMPLOYMENT
EXHIBIT NO. 1
DATE Feb 16, 1995
BILL NO. SB 348

DOLI

Administrative Assessment

38-71-201 MCA

This statute requires the department (DOLI) to levy an administrative assessment to pay for operating cost based on equitable allocation procedures.

YEAR	TOTAL ASSESSMENT	INCREASE OVER PRIOR YEAR	PLAN I ASSESSMENT	PLAN I % INC/DEC OVER PRIOR YEAR	% PLAN I ASSESSMENT PAID BY SCHOOLS GROUP	SCHOOLS GROUP ASSESSMENT	SCHOOLS GROUP ASSESSMENT INCREASE	% OF TOTA ASSESSMEI PAID BY SCHLS GRC
1991	$2,357,786		$468,549		3%	$12,552*		.05%**
1992	$2,588,500	10%	$679,130	45%	24%	$162,477	1194%**	6.3%
1993	$3,262,708	26%	$539,970	(20%)	30%	$160,679	(1%)	4.9%
1994	$4,122,644	26%	$1,100,115	104%	32%	$356,222	122%	8.6%
1995	$3,582,236	(13%)	$1,136,304	3%	31%	$350,376	(2%)	9.8%

* 1 1/2 MONTHS OF THE YEAR

**NOT ACCURATE PARTIAL YEAR VS FULL YEA

Jul 18, 1995
SB 348

1994 WORKLOAD FUNCTIONS	SCHOOLS	PLAN I	PLAN II	PLAN III	TOTAL ALL PLANS	% OF PLAN I ASSESSMENT PAID BY SCHOOLS	% OF THE PLAN I WORKLOAD INDICATOR ATTRIBUTED TO SCHOOLS	% OF TOTAL ASSESSMENT PAID BY SCHOOLS	% OF TOTAL ASSESSMENT WORK LOAD INDICATOR ATTRIBUTED TO SCHOOLS
CLAIMS	1070	6063	5317	16633	28013	32%	17.65%	8.60%	3.82%
WORK COMP COURT	2	38	78	131	247	32%	5.26%	8.60%	0.81%
HEARINGS/LEGAL	0	19	29	96	144	32%	0	8.60%	0
REHABILITATION DLI	2	13	14	74	101	32%	15.38%	8.60%	1.98%
REHABILITATION SRS	0	29	42	163	234	32%	0	8.60%	0
MEDIATION	10	141	177	701	1019	32%	7.09%	8.60%	0.98%
MINING INSPECTIONS (FIELD HOURS)	0	606	74	258	938	32%	0	8.60%	0

SCHOOLS PAID 32% OF THE 1994 PLAN I ASSESSMENT (1,100,115)
AND 8.6% OF THE TOTAL ASSESSMENT (4,122,644)

SENATE LABOR & EMPLOYMENT
EXHIBIT NO. 2
DATE Feb 18, 1995
BILL NO. SB 384

WHAT AIA's PROPOSAL DOES

AIA proposes a competitive rating system for workers' compensation insurance in Montana. It adopts the approach of the Maryland rating law that parallels competitive rate law enactments in recent years in Virginia, Pennsylvania, Delaware, California, and Missouri. Under AIA's draft, the statistical organization (NCCI) will be authorized to collect only loss cost data. As it does currently, it will actuarially assess the data and prepare a recommendation representing an actuarially predictive value of future loss costs. Unlike current practice, individual insurers will be required to develop and file their own expense and profit rating components.

NCCI-developed loss costs will be subject to the Insurance Department's advance review for compatibility with accepted actuarial standards. If the NCCI's filed loss costs are not disapproved within 30 days, they are deemed approved. If an insurer's final rate is not lower than the NCCI-approved loss costs, the insurer's final rate is effective upon filing. Rates in a competitive market are deemed not excessive. In a competitive market, the Insurance Commissioner may disapprove a rate if inadequate or unfairly discriminatory. In a market found after hearing to be non-competitive, the Commissioner may require rates to be pre-filed at least 30 days prior to their effective date. The Commissioner may suspend a rate found to be not in compliance with the statute and may order prospective rate adjustment on any policy then if effect.

* * *

American Insurance Association
January 1994

SENATE LABOR & EMPLOYMENT
EXHIBIT NO
DATE
BILL NO.

MONTANA COMPETITIVE RATING FOR WORKERS' COMPENSATION COVERAGE SENATE BILL 384 PREPARED BY AMERICAN INSURANCE ASSOCIATION

The Current System:

Montana workers' compensation rates for the Plan 2 carriers are currently set by the Classification and Rating Committee. The C & R Committee is a statutory committee (MCA Section 33-16-1011) made up of two insurance company representatives, an employer, an insurance agent and a representative of the State Fund. Proposed rates are filed with the C & R Committee by the National Council on Compensation Insurance [NCCI]. Insurers are required to submit loss and expense data to NCCI. The data are actuarially evaluated to predict costs over the following year. Aggregation of industry-wide loss and expense data affords greater accuracy and promotes competition.

A rate request consists of many elements: the estimate of losses expected over the ensuing year (known as loss costs or pure premium, adjusted for trend and loss development), loss adjustment expenses (the cost incurred by claims management), operating costs, taxes, assessments, license fees, other fees, and average insurance company profit.

Once approved by the C&R Committee, the rates are filed with the Insurance Commissioner. Insurance companies are required to use the filed rates, although they are permitted to deviate slightly from the filed rate based on individual company experience.

The result is that Montana policyholders do not get the full benefit of a competitive market for prices when they look to purchase workers' compensation insurance.

Years ago, when the law was first passed, the database to provide rating information was not as sophisticated and advanced as it is now. The law was appropriate for its time. It no longer is. In recent years, some states have modernized insurance commissioner oversight of workers' compensation ratemaking. There is a trend among the states to rely more on individual insurers to develop their own expenses. The terms "open competition," "competitive rating," or "loss cost rating" often are used to describe these approaches.

SENATE LABOR & EMPLOYMENT
EXHIBIT NO 2
DATE 2-15-95
BILL NO SB 384

What Will Happen to Montana Rates when Competition is Required?

Currently, like all other states 15 years ago, Plan 2 insurers are prohibited from using rates different than those approved for use in Montana. Senate Bill 384 removes the requirement that competitors on the C&R Committee set rates and require all other insurers to adhere to them to do business in the state. Each company will be required to create its own final rates to be used, based on their own expenses, profit margins, fees, overhead, etc. NCCI [or the designated organization] will continue to file information, but it will be limited to the actual costs of paying claims in the state.

The Insurance Commissioner must determine if there is a competitive market in the state, and monitor the market to insure that rates are not excessive, inadequate, nor unfairly discriminatory. The bill provides guidelines for the Insurance Commissioner to make that determination. The Commissioner has the authority to stop a company from using improper rates, and return premium if it does.

States with competitive rating laws, like Senate Bill 384, have generally seen lower rates in those states where the previous rates had been adequate because of the required competition. Rates have gone up in those states where insurers needed to increase prices to cover their costs. But rather than averaging out rates to take into account efficient and inefficient insurance company costs, prices in states with laws like Senate Bill 384 more accurately reflect individual insurance company costs.

Policyholders will have the benefit of shopping around and getting the best rate available for their business, something they cannot do now. The money businesses may save on rates can be used for business expansion, creating more jobs, higher salaries, better benefits or lower prices.

The designated workers' compensation advisory organization, under the bill, would collect information only dealing with the actual costs of paying claims in the state. Each individual insurance company would have to review their own profit factors, expenses, overhead costs, fees, etc. and arrive at their own final rates. 34 states, including Oregon, Utah, Colorado and South Dakota, have changed their rating laws over the last 12 years requiring insurers to compete.

Montana most recently saw a rate decrease in the "fully loaded" rates. If that trend continues, rates can be expected to go down even further, on average, because of increased competition.

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DATE
BILL NO.

Who Makes Sure Insurance Companies Compete?

The Commissioner of Insurance must determine, using quantitative data, the level of competition in the market. If the market is found to be uncompetitive, the Commissioner has the authority to impose rates. If an insurer improperly uses a rate, the Commissioner would have the power to return improperly collected premiums to policyholders, and, should the insurance company not comply, the Commissioner has the power to fine companies up to $1000 per violation, or to suspend the company's license to do business in the state.

Does the Bill Require NCCI to be the Designated Advisory Organization?

No.

The National Council on Compensation Insurance [NCCI], comprises insurance companies providing workers' compensation insurance, as well as other noninsurers. Insurers are required to submit loss and expense data to the NCCI. These data are actuarially evaluated to predict costs over the following year. Aggregation of industry-wide loss and expense data affords greater accuracy and promotes competition.

Under the current system in Montana, NCCI is the licensed statistical organization that submits advisory rate recommendations to the Insurance Commissioner for review prior to insurers' authority to use them.

Under Senate Bill 384, however, **the Insurance Commissioner may designate any rating organization that is licensed to assist him in regulating Plan 2 insurers.** It is appropriate that the Insurance Commissioner, the impartial regulator, designates the advisory organization, rather than the selection being made by insurance companies competing in the workers' compensation market.

What is the Impact on the State Fund?

The bill has no impact, in any way, on the manner in which the State Fund currently does business.

The impact is limited to the Plan 2 insurers, requiring them to compete with each other on the rates they use for Montana policyholders. Under the bill, the State Fund has the option of providing their information to other organizations.

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BILL NO. SB 384

Are Benefits Affected?

No. Senate Bill 384 does not affect who gets benefits, how many benefits they may get, how long they get benefits, nor how benefit levels are determined. The bill deals only with prices Plan 2 insurers charge, and how they arrive at those prices.

What is the Fiscal Impact on the Insurance Commissioner?

While the fiscal note indicates that there will be one FTE required under this bill, that FTE is required to regulate under the current law. **There should be no increased cost to the Commissioner's office,** save necessary expenses associated with rulemaking.

Is the Law Based on any Other Model?

Yes. The law is based on an NAIC model, adopted October 1992, which has been modified to conform to Montana's insurance regulatory scheme and the unique status of the State Fund outside that regulatory scheme. The use of that model is consistent with an increasingly large portion of the Insurance Code.

SENATE LABOR & EMPLOYMEN
EXHIBIT NO. _____
DATE _____
BILL NO. _____

Montana Competitive Rating for Workers' Compensation Coverage Senate Bill 384

Other States With Competitive Rating Laws:

Alabama
Arkansas
California
Colorado
Connecticut
Delaware
District of Columbia
Georgia
Hawaii
Illinois
Indiana
Iowa
Kansas
Kentucky
Louisiana
Maine
Maryland
Michigan
Minnesota
Mississippi
Missouri
Nebraska
New Hampshire
New Mexico
Oklahoma
Oregon
Pennsylvania
Rhode Island
South Carolina
South Dakota
Texas
Utah
Vermont
Virginia

SENATE LABOR & EMPLOYMENT
EXHIBIT NO. 2
DATE 2-18-95
BILL NO. SB 384

MONTANA COMPETITIVE RATING
SB 384
SUMMARY PREPARED BY
AMERICAN INSURANCE ASSOCIATION

Section 1 - Definitions

Sets out the new definitions of a competitive marketplace in the state, new terms related to requiring individual insurers set their own rates for policyholders, as the State Fund currently does, but does not apply to the State Fund, defines a workers' compensation advisory organization and specifies that the information filed by that organization on behalf of Plan 2 insurers is limited to the cost of paying claims in Montana and is not to include individual insurance company profit, expenses, overhead, license, fees, etc.

Section 2 - Competitive Market

A competitive market is presumed to exist, unless the Commissioner finds otherwise. The Commissioner is required to use quantitative economic analyses to measure the competitiveness of the market. That analysis is to include the number of insurers operating in the state, market shares of the insurers in the state, ease of entry into the market, market concentration and insurer profitability.

Section 3 - Ratemaking Standards and Commissioner's Review

Rates may not be excessive, inadequate or unfairly discriminatory. Standards are set out to define what constitutes excessive, inadequate and unfairly discriminatory rates, including expenses, profits, loss experience, catastrophe hazards and dividends, savings and unabsorbed premiums returned to policyholders.

Section 4 - Dividends

Dividends and other forms of premium return from insurers to policyholders are specifically permitted.

Section 5 - Advisory Organization

The Commissioner shall annually designate an advisory organization to collect data from insurers and the State Fund through a uniform statistical reporting plan. The advisory organization would file and have approved by the Commissioner a uniform experience rating plan to measure individual employer's safety and loss prevention effectiveness, and a uniform classification system for Plan 2 insurers. The State Fund would be required to provide data under the uniform statistical reporting plan, as is done currently, but would not be required to adhere to the uniform experience rating plan or classification system. These requirements do not alter the way in which the State Fund does business today. Specifically permits plans to permit the return of premium, or premium credits or debits based on past or expected loss experience of an individual policyholder.

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Amendments proposed by the State Fund would allow the State Fund to belong to an advisory organization other than the organization designated by the Commissioner, but would require the reporting of information under requirements similar to this section.

Section 6 - Interchange of Rating Plan, Data and Cooperative Action in Ratemaking

Cooperative activity is limited to that needed to provide information to licensed advisory organizations for statistical reporting, loss experience reporting and the classification system. The Commissioner has oversight of the interchange of information. This section does not apply to the State Fund.

Section 7 - Rate Filings

The advisory organization is limited to filing information relating to the costs of paying workers' compensation claims in Montana, and is specifically prohibited from including any insurance company profit, expense, other than claim payment expenses, overhead, tax, license, fee or other individual insurance company factors in its filings. Where necessary, information from out of state may be used. Individual insurance company profits, costs, overhead, taxes, fees, etc. may not be included in the information filed by the advisory organization and must be provided to the Commissioner by the individual insurer. Insurers may adopt the loss cost filings of the advisory organization and add their expenses, profit factors, overhead, taxes, licenses, fees, etc. This section does not apply to the State Fund.

Section 8 - Rate Filing Review

Filings must be on record for review by the Commissioner a minimum of 30 days before going into effect, unless the Commissioner disapproves of the filing, requests an extension or, approves a shorter time period. This section does not apply to the State Fund.

Section 9 -- Improper Rates

If the Commissioner finds that a rate is in violation of the law, he or she shall order its discontinuance, and apply a premium adjustment to any policy then in force. If a rate is disapproved, the last approved rate shall be reimposed for the next year, unless the Commissioner approves otherwise. The Commissioner's findings must be made in accordance with accepted actuarial standards. The Commissioner shall order the return of any improperly collected premium. This section does not apply to the State Fund.

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Section 10 - Restrictions on Certain Insurers

The Commissioner may require special review of an insurer's filings, if he or she finds it to be in the best interests of the insurer and policyholders of the state. This section does not apply to the State Fund.

Section 11 - Delay of Rates in a Noncompetitive Market

The Commissioner may require additional filing review time if he or she finds that a competitive market does not exist, provides written notice for an extended of the review period, or, if requests for additional information have not been met. This section does not apply to the State Fund.

Section 12 -- Consent to Rate

If a policyholder provides written agreement, a rate in excess of that otherwise approved may be used. This section does not apply to the State Fund.

Section 13 - Acts Reducing Competition Prohibited.

Insurers and advisory organizations may not

*monopolize or attempt to monopolize, combine or conspire to monopolize the business of insurance, subdivision or class;

*agree with each other to charge or to adhere to any rate or rating plan other than that filed and approved by the Commissioner to be in compliance with this act;

*agree with each other to restrain trade or lessen competition;

*agree with each other to refuse to deal with any person in relation to the sale of insurance; or

*interfere with any insurer in making its own rates or charge rates different than any other insurer.

The advisory organization may not require adherence to its rates or prevent any insurer from acting independently. This section does not apply to the State Fund, but will apply to the advisory organization of which the State Fund is a member if State Fund amendments are adopted.

Section 14 - Advisory Organization - Permitted Activity

The advisory organization may:

*develop statistical plans including class definitions;

*collect statistical information from members, subscribers or any other source;

*prepare and distribute rate information related to the costs of paying workers' compensation claims in accordance with the statistical plan and in such detail so that insurers can interpret the information according to their own methods or interpretations;

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*prepare and distribute manuals of rating rules and schedules, that do not include information which can be used to calculate final rates without additional outside information;
*distribute information that is on file with the Commissioner and open to public inspection;
*collect, compile and distribute past and present prices of individual insurers, if such information is available to the general public;
*conduct research and collect information on the impact of benefit level changes;
*prepare and distribute rules and values for the uniform rating plan; and
*calculate and disseminate premium modification factors.
This section does not affect the current business practices of the State Fund.

Section 15 - Advisory Organization - Prohibited Activity
The advisory organization may not compile or distribute recommendations relating to expenses, profits, overhead, taxes, licenses, fees, etc. This section does not apply to the State Fund.

Section 16 - Penalties
The Commissioner may apply a $500 fine per violation; $1000, per violation if the violation is willful to any insurer or the advisory organization. The Commissioner may suspend the license of any insurer or the advisory organization for failure to comply with an order of the Commissioner. This section does not apply to the State Fund, but will apply to the advisory organization of which the State Fund is a member if State Fund amendments are adopted.

Section 17 - Appeals from the Commissioner
Appeals of an order, decision or act of the Commissioner may be appealed to District Court. This section does not affect the current business practices of the State Fund.

Section 18 - Amends Section 33-16-303, MCA
Amends the current law to clarify correct internal references.

Amends Section 33-16-403, MCA **[NOTE: This Section is not included in the original bill, but will be included in the State Fund amendments, if they are offered.]**
Permits that only one workers' compensation advisory organization may be designated at one time. The designated advisory organization must renew its license on an annual basis.

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Section 19 - Amends Section 33-16-1002, MCA
Specifies that this act applies to Plan 2 insurers making of premium rates for workers' compensation or employers liability, but not reinsurance.

Section 20 - Amends Section 33-16-1011, MCA - The Classification and Rating Committee membership and term.
Deletes reference to "rating organization," and replaces it with "the advisory organization designated under [section 5]."

Section 21 - Amends Section 33-16-1012, MCA - The Classification and Rating Committee Powers
Deletes the authority of the Classification and Rating Committee to establish rates.

Section 22 - Amends Section 39-71-435, MCA
Deletes reference to "rating organization," and replaces it with "the advisory organization designated under [section 5]."

Section 23 - Amends Section 39-71-2204, MCA
Section 24 - Amends Section 39-71-2205, MCA
Section 25 - Amends Section 39-71-2211, MCA
Deletes reference to the national council on compensation insurance, and replaces it with "the advisory organization designated in section 5."

Section 26 - Amends Section 39-71-2316, MCA
Deletes reference to the national council on compensation insurance, and replaces it with "the advisory organization designated in section 5." Requires State Fund membership in advisory organization.
If State Fund amendments are adopted, this section will require State Fund membership in a licensed advisory organization, but not necessarily the designated advisory organization.

Section 27 - Repeals Sections 33-16-1004 and 33-16-1005, MCA, the current rating law.

Section 28 - Coordination

Section 29 - Codification

Section 30 - Saving Clause

Section 31 - Severability

Section 32 - This act is effective upon and applies to rate filings made on or after October 1, 1995.

SENATE LABOR & EMPLOYM
EXHIBIT NO.
DATE
BILL NO.

MEMORANDUM

American Insurance Association

TO: Bruce Wood

FROM: David Corum

DATE: December 13, 1994

RE: Montana workers' compensation insurance market

As expected, Herfindahl-Hirschman Index (HHI) scores indicate a highly non-competitive workers' compensation insurance market in Montana. Joe Palermo explained to me that the U.S. Department of Justice uses the following guidelines in interpreting HHI results in the context of reviewing a proposed merger or acquisition. An HHI score of less than 1,000 indicates that a market is generally competitive. A 1,000-1,800 score indicates moderate competition and justifies a closer examination of specific structural features of the market in question. A score exceeding 1,800 indicates serious market problems and is likely to receive very close examination by Justice. The HHI score for Montana's workers' compensation insurance market in 1993 is 5,394. (The countrywide HHI for workers' compensation in 1993 was 302.) The sole reason for Montana's high HHI score was the State Fund's 73% market share.

Sheet1

SENATE LABOR & EMPLOYMENT
EXHIBIT NO. 2
DATE 2-18-95
BILL NO. SB 384

MONTANA
WORKERS' COMPENSATION
WITHOUT STATE FUND

TOP 50 REPORT

COMPANY NAME	STAT CODE	LINE CODE	DIRECT PREMIUMS WRITTEN	MARKET SHARE (D.P.W.)	CUMULATIVE	(MARKET SHARE)2	SUM OF SQUARES
KEMPER NAT INS COS	27	14	9,853,394.00	15.68	15.68	245.9346009	736.6735102
LIBERTY MUTUAL GROUP	27	14	7,528,026.00	11.98	27.66	143.552377	
AMER INTERN GROUP	27	14	6,227,986.00	9.91	37.58	98.25237394	
CIGNA GROUP	27	14	5,393,177.00	8.58	46.16	73.67790767	
MONTANA LOGGERS EXCH	27	14	3,261,031.00	5.19	51.35	26.93753125	
ARGONAUT INS GROUP	27	14	3,247,309.00	5.17	56.52	26.71130686	
NATIONWIDE GROUP	27	14	3,097,769.00	4.93	61.45	24.30813296	
RELIANCE INS GROUP	27	14	2,994,198.00	4.77	66.21	22.70957301	
FIREMAN'S FUND COS	27	14	2,353,489.00	3.75	69.96	14.03047203	
CNA INS COMPANIES	27	14	2,004,142.00	3.19	73.15	10.17430682	
HOME INS COS	27	14	1,955,471.00	3.11	76.26	9.686138976	
TALEGEN INS GROUPS	27	14	1,936,143.00	3.08	79.34	9.495608431	
OLD REPUBLIC GEN GRP	27	14	1,559,917.00	2.48	81.83	6.163833782	
AETNA LIFE & CAS GRP	27	14	1,537,336.00	2.45	84.27	5.986672918	
LEGION INS CO	27	14	1,268,209.00	2.02	86.29	4.074080429	
ZURICH INS GROUP-U S	27	14	1,246,548.00	1.98	88.27	3.93609842	
TRAVELERS INS GROUP	27	14	1,065,549.00	1.70	89.97	2.876039115	
ST PAUL GROUP	27	14	1,008,596.00	1.61	91.58	2.576805023	
ITT HARTFORD INS GRP	27	14	838,285.00	1.33	92.91	1.780048415	
JOHN DEERE GROUP	27	14	813,312.00	1.29	94.2	1.675568923	
LUMBERMEN'S UNDRG AL	27	14	429,018.00	0.68	94.89	0.466228657	
CONTINENTAL INS COS	27	14	427,264.00	0.68	95.57	0.462424186	
MIDWEST EMPLRS CAS	27	14	292,389.00	0.47	96.03	0.218555888	
ORION CAPITAL COS	27	14	292,183.00	0.47	96.5	0.216250851	
SAFECO INS COMPANIES	27	14	270,521.00	0.43	96.93	0.185374463	
UNITED STATES F&G GR	27	14	216,577.00	0.35	97.27	0.119144756	
FEDERATED MUTUAL GRP	27	14	161,000.00	0.26	97.53	0.06565982	
BALDWIN & LYONS GRP	27	14	158,430.00	0.25	97.78	0.06358033	
PHICO INS CO	27	14	149,242.00	0.24	98.02	0.058419607	
EMPLOYERS RE GROUP	27	14	143,614.00	0.23	98.25	0.05224451	
CHUBB GRP OF INS COS	27	14	141,058.00	0.22	98.47	0.050401491	
SENTRY INS GROUP	27	14	116,180.00	0.18	98.65	0.034190912	
CUNA MUT INS GROUP	27	14	111,518.00	0.18	98.83	0.031501982	
ROYAL INS GROUP	27	14	106,138.00	0.17	99	0.028535779	
TIG HOLDINGS GROUP	27	14	91,434.00	0.15	99.15	0.021176948	
REPUBLIC WESTERN INS	27	14	83,363.00	0.13	99.28	0.017603321	
PETROLEUM CASUALTY	27	14	71,427.00	0.11	99.4	0.01292328	
HIGHLANDS INS GROUP	27	14	60,291.00	0.10	99.49	0.009207737	
FARMERS INS GROUP	27	14	52,549.00	0.08	99.58	0.006994825	
GULF INS GROUP	27	14	47,460.00	0.08	99.65	0.005705627	
AMER FINANCIAL GROUP	27	14	39,055.00	0.06	99.71	0.003863681	
ATLANTIC MUTUAL COS	27	14	32,143.00	0.05	99.76	0.002617103	
PHOENIX INS GROUP	27	14	29,206.00	0.05	99.81	0.002160688	
NAT AMERICAN INS	27	14	17,574.00	0.03	99.84	0.000782329	
CHURCH MUTUAL INS	27	14	15,900.00	0.03	99.86	0.000640387	
NORTHWESTERN NAT GRP	27	14	14,347.00	0.02	99.89	0.000521399	
INDIANA LUMBERMN MUT	27	14	12,890.00	0.02	99.91	0.000420876	
GENERAL ACC GROUP	27	14	11,251.00	0.02	99.93	0.000320649	
EMC INS COS	27	14	10,929.00	0.02	99.94	0.000302553	
FLORISTS' MUTUAL GRP	27	14	10,450.00	0.02	99.96	0.000276618	
TOTAL TOP 50	27	14	62,805,608.00	99.96	99.96		
TOTAL ALL COMPANIES	27	14	62,831,296.00	100	100		

STATE LABOR & EMPLOYME
EXHIBIT NO.
DATE
BILL NO.

WORKERS' COMPENSATION RATEMAKING IN MONTANA

AT A GLANCE

Under the current system in Montana, the National Council on Compensation Insurance, as the licensed statistical organization in Montana, submits advisory rate recommendations to the Insurance Department for review prior to insurers' authority to use them. NCCI is comprised of insurance companies providing workers' compensation insurance, as well as other non-insurers. Insurers are required to submit loss and expense data to the NCCI. These data are actuarially evaluated to predict costs over the following year. Aggregation of industry-wide loss and expense data affords greater accuracy and promotes competition.

A rate request consists of many elements: The estimate of losses expected over the ensuing year (known as loss costs or pure premium, adjusted for trend and loss development), loss adjustment expenses (the cost incurred by claims management), operating costs, taxes, assessments, and other fees, and profit. States differ in how these rate elements are treated for purposes of Insurance Department review and approval. The rate process is closely supervised by state government.

✓ All states by statute require that rates be adequate but not excessive, and that they distribute costs fairly among policyholders.

✓ All states actively exercise their regulatory authority to ensure compliance. There are various approaches to state regulation.

✓ Some states allow insurers to adopt the rating organization's recommended rate without express Insurance Department approval, while others, such as Montana, provide effectively for prior approval by requiring NCCI to file proposed rates before their effective date. Montana, as do some other states, limits NCCI's developed rate to an advisory rate, permitting insurers to adopt its advisory rate (once approved) or an alternative rate.

✓ Other states require loss costs to be submitted for approval but require individual insurers to file their own expenses.

✓ Still others require the rating organization to develop a full, final rate, subject to Insurance Department approval. This rating system is similar to the practice in most states.

In recent years some states have modernized Insurance

SENATE LABOR & EMPLOYMENT
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DATE 2-18-95
BILL NO. SB 384

Department oversight of workers' compensation ratemaking. There is a trend among the states to rely more on individual insurers to develop their own expenses. The terms "open competition," "competitive rating," or "loss cost rating" often are used to describe these approaches. However, they do not necessarily describe the relative degree of pricing freedom intended. *Therefore, what is crucial to understanding a rating system is the role of the rating organization, the extent to which its decisions are subject to prior approval, and the extent to which individual insurers can implement a rate without prior approval. Also of crucial importance is the standard of review.*

Montana requires the NCCI to collect data on losses, expenses, profits, licenses, fees, and other associated expenses, because under Montana law the NCCI is required to develop a fully developed and trended final advisory rate, including an allowance for expenses and reasonable profit.

Illinois, Maryland, and Oregon all are known as "competitive rating" jurisdictions; but the role of the rating organization, as well as the relative extent of pricing flexibility in each, differ markedly. Illinois allows the rating organization to develop a final rate which insurers may adopt. Prior approval is not required for either the rating organization's filing or individual insurer filings. Oregon, on the other hand, requires each insurer to separately gain approval of its own loss costs, notwithstanding the approval given to the rating organization's loss costs filing. Maryland requires prior approval of the rating organization's loss costs filing which individual insurers can adopt ("reference") in establishing their own final rates (adding in their own expense/profit factors) without prior approval. In all cases Insurance Commissioners still have the authority to disapprove an implemented rate if it fails to meet the statutory standard.

Multiple levels of prior approval -- requiring prior approval of a rating organization-developed loss cost element, as well as of the individual insurer-developed expenses/profit component -- combine the worst features of all rating laws -- requiring each insurer to absorb the expenses and endure the uncertainty of developing each component of its own rates, subjecting both the rating organization's activities, as well as individual insurer activities to prior approval, while preventing the timely review and implementation of necessary rating adjustments.

The standard of review is also an important consideration in evaluating a rating law. Although all states by statute require that rates not be excessive, inadequate, or unfairly discriminatory, they differ in how they interpret this standard.

Many states relying on greater individual insurer

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responsibility to develop their own rates look to competition in the marketplace as the test of whether a rate is excessive or inadequate and presume that a competitive market exists. Maryland's and Michigan's Insurance Departments, for example, are required to issue an annual report on the degree of competition in their respective markets for workers' compensation, predicated on accepted actuarial standards. The National Association of Insurance Commissioners' Model Competitive Rating Law, promulgated in the early 1980s, states expressly that: "Rates in a competitive market are not excessive." Many states, such as Minnesota, and Delaware have incorporated this language expressly into their rating laws while others, such as Missouri and California, have adopted this concept impliedly.

* * *

CITY OF BILLINGS

OFFICE OF CITY ADMINISTRATOR

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FAX (406) 657-8390 EMAIL: mswatson @ billings.lib.mt.us

February 17, 1995

EXHIBIT 3
DATE February 18, 1995
BILL NO. SB 354

W. Jim Kembel
1100 Knight Street
Helena, Montana 59601

RE: SENATE BILL 354

Dear Jim:

I have reviewed the provisions of Senate Bill 354 as submitted by Senator Forrester. The bill proposes a self-funding registration program for contractors in the State of Montana.

The City of Billings has received consistent inquiries by its citizens for enforcement of City standards as it pertains to irresponsible contractors. Most contractors perform work in a responsible manner. However, others are the cause of shoddy workmanship and unsatisfactory performance for the citizens of this community. For example, recent hail storms caused a rash of roofing contractors to appear in our community. Some of those contractors have cost our residents thousands of dollars for improperly installed roofing.

The proposal of Senator Forrester provides for a registration of contractors and appropriate bonding. The registration mechanism supervised through the state may or may not affect the problem of faulty workmanship from irresponsible or incompetent contractors.

It is a start that the City of Billings believes would provide a long term registration program of legitimate contractors but address a long term intent of testing and training legitimate contractors. Senate Bill 354 should be seriously examined.

Sincerely,

Mark S. Watson
City Administrator

MSW:bm

SENATE LABOR & EMPLOYMENT
EXHIBIT NO. 4
DATE Feb. 18, 1995
BILL NO. SB354

EATON & YOST CONSTRUCTION

YOUR QUALITY BUILDER

2510 GRAND AVE.
BILLINGS, MONTANA 59102

(406) 259-4610
(406) 259-4768

2-17-95

I support Senate Bill # 354

and ask you do the Same.

Sincerely,

SHELDON EATON

SENATE [illegible] EXHIBIT
EXH 5
DATE Feb 18, 1995
BILL NO SB 354

Feb 17, 1995

TO Chairperson for Committe on SB 354

I Scott Myers, president of Myers Custom Homes Inc,
Support the Above bill.

Sincerely

Scott Myers

SENATE [illegible]
EXHIBIT NO. 6
DATE Feb 18, 1995
BILL NO. SB 354

To ;

Having read Senate Bill # 354, I must say that this bill is a positive step forward in improving the workers compensation crisis facing the state of Montana.

For too long sub-contractors like myself have been victimized by illegal, fly-by-night operators calling themselves legitimate contractors who refuse to provide for their employees. Workers compensation costs money, real money. I can recall many times when my wife, who kept our books, would be literally in Tears asking where we were going to get the money to pay workers compensation bills. At the same time, these other "contractors" were recieving the same money for jobs as I was and were able to pocket a rather substantial hunk of cash. ~~The~~ The bottom ~~Corp~~ line is; competitive forces kept my prices at the level of ~~some~~ my competitors but they were at an unfair advantage because I felt that my employees were important and deserved to be covered in case of an industrial accident.

Montana needs this bill! Make this bill law and then enforce the law! Don't pass this bill with no teeth however. A law without enforcement is worse than no law. I would suggest that you register all contractors and sub-contractors, then hire enough people to examine and enforce the provisions of this bill. The state needs to get all employers under the Workers Compensation umbrella so the fund can expand its base and hopefully lower rates for all employers.

Thank you.

Will Suralski
owner: Mid Valley Drywall
Workers Compensation # 3-1219-11-5

SENATE LABOR & EMPLOYMENT
EXHIBIT 7
DATE Feb 18, 1995
BILL NO. SB 354

Feb. 17, 1995

Dears Sirs:

I would like to put My Support behind SB354. I see a need to stop the problem of People working as employers without the proper protection for their employees. Workers Comp. Liab. Ins. etc. I would like to see provision in the rules for Bidding and Contracting, even in the event of Court Action by a customer.

Sincerely,

Dyke Const. Co.:

Gloria Dyke

SENATE LABOR & EMPLOY
EXHIBIT NO. 8
DATE Feb 18, 1995
BILL NO. SB 354

Concrete Construction Company
P.O. Box 30623
Billings, Mt. 59107

To: Senate Committee

From: Gerald Seeley and Don Hunter

Re: SB354

February 17, 1995

To whom it may concern,

As the owner of Concrete Construction Company I would like to urge you to support senate bill 354 if under the Notice to Customer it includes **Workmans Compensation** data and also **Liability Insurance** information.

Sincerely,

Gerald Seeley
Owner

SENATE LABOR & EMPLOYMENT
EXHIBIT NO. 9
DATE Feb 18, 1995
BILL NO. SB 354

HIGH TECH
CONSTRUCTION

February 15, 1995

TO WHOM IT MAY CONCERN:

HIGH TECH CONSTRUCTION wants to go on record as supporting Senate Bill #354. This bill is a necessity to protect the private sector from liens, negligent work and breach of contract problems. This bill is needed to make sure all contractors are in compliance with laws governing Workers' Compensation coverage and Unemployment Insurance coverage.

This bill will protect the public from unreliable, financially irresponsible and independent contractors. It will also put all contractors on a "level playing field" during the bid process on contracts.

Please support Senate Bill #354 by voting "**YES**".

Cordially yours,

HIGH TECH CONSTRUCTION

James F. Haar, President

JFH/cic

1201 4TH AVENUE NORTH, P.O. BOX 31511, BILLINGS, MT 59107 (406) 248-3700 FAX (406) 248-3776

SENATE LABOR & EMPLOYMENT
EXHIBIT NO. 10
DATE February 18, 1995
BILL NO. SB 354

KUMMERFELDT CONSTRUCTION
QUALITY BUILDERS • LICENSED CONTRACTOR
3129 Conestoga Way RR #11
BILLINGS, MONTANA 59105
(406) 252-4408

Regarding House bill 354

I support the intent & all that is covered in the statement of intent. & I understand that the intent is there however I have some grave concerns

1.) I feel that everybody should carry their own liability insurance & it should only be up to the general to make sure that they have proof - NOT responsibility to pay

2.) The cost of the general to BOND everything would put a lot of jobs & companies out of business. I do 60% Remodeling & every month up to 20 jobs My cost for BONDing as a general would put me out of business - I feel great for sub contractors only.

3.) Disclosure Statement needs Adjustment & proofs of liens & Actual work needs to be clarified

benefits statments were aboard. Major concern there as a general contractor

We need protection for the illegal subs NOT MORE pressure & money on the general contractor

I'd like to keep informed.

Shaun Trumbeldt

SENATE LABOR & EMPLOYMENT
EXHIBIT NO. 11
DATE Feb 18, 1995
BILL NO. SB 354

PRESTIGE HOMES
Fred & Carol Stevenson
3300 Alexander Road
Billings, MT 59105
259-9771

I would like to address Senate Bill #354

I am, generally, in favor of the Bill. However, I think there are a few areas in which it does not go far enough.

1 In order to obtain a Contractors License, there should be some kind of documentation to prove that the contractor is qualified to do the job and some kind of continuing education program.

2 Regarding bonding, there should be an appeals board or arbitration board, so that small claims do not get costly or over looked.

3 There should be some manner of enforcement that would make it mandatory to use Licensed Contractors for all construction. A home owner could build on his own house, but, any hired work should be done by a Licensed Contractor.

4 There should be an on-going education for the general public regarding how to use a Licensed Contractor. There should also be education on mandatory reporting of the cost of the job, similar to a Form 1099, for income tax purposes. (Many small jobs are not reported for state or federal taxes.)

5 This licensing should be under the Department of Commerce.

I feel the licensing of Contractors is important. It should be looked at more carefully and made more efficient for multiple purposes. Things it should address more thoroughly are Workers Compensation and Independent Contractor exemptions.

Thank you for considering my views.

Fred W. Stevenson
Fred W. Stevenson

SENATE LABOR & EMPLOYMENT
EXHIBIT NO. 12
DATE Feb 18, 1995
BILL NO. SB 354

February 17, 1995
3335 John O'Groats Ct.
Billings, MT 59101

Gentlemen:

I support Senate Bill #354 and ask you to do the same.

Sincerely,

Kraig Kincaid

Kraig Kincaid

Owner, Kincaid Drywall

SENATE LABOR & EMPLOYMENT
EXHIBIT NO. 13
DATE February 18, 1995
BILL NO. SB 354

Air Controls

FEBRUARY 16, 1995

SUBJECT: SENATE BILL #354

DEAR COMMITTEE MEMBERS,

WE ARE IN SUPPORT OF SENATE BILL #354 AND WOULD ALSO HOPE ALONG WITH THIS BILL THE RULES WOULD INCLUDE LIABILITY & WORKMAN'S COMP. INSURANCE REQUIREMENTS. WE FEEL THIS WOULD GO FAR IN PROTECTING THE GENERAL PUBLIC OVERALL. WE THANK YOU FOR YOUR CONSIDERATION IN THIS MATTER.

SINCERELY,

AL SCHAFF

al Schaff

AIR CONTROLS CO.,INC.

Bozeman, Montana 59715
(406) 587-6292
•
2024 2nd Avenue North
Billings, Montana 59101
•
Livingston, Montana 59047
(406) 222-1332

Bailey Masonry Inc

3243 Latigo
Phone 259-7410
Billings, Montana 59105-4697

STATE EMPLOYMENT
EXHIBIT NO. 14
DATE Feb 18, 1995
BILL NO SB 354

To Whom IT May Concern.

I would Like To endorse Senate Bill 354

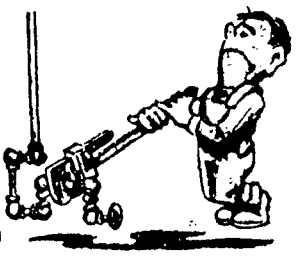
and would encourage you To do The Same

Thank You

Butch Bailey

Star Service, Inc.

Mechanical Contractors



26 SOUTH 24TH STREET P.O. BOX 1560 BILLINGS, MONTANA 59103-1560

PHONE: (406) 259-3754 FAX: (406) 259-2420

SENATE LABOR & EMPLOYMENT
EXHIBIT NO. 15
DATE Feb 18, 1995
BILL NO. SB 354

February 17, 1995

Re: **SENATE BILL # 354**
CONTRACTOR REGISTRATION

Dear Senators:

Star Service, Inc. is a licensed Montana Contractor (License No 1373 A) and as such we favor the above Bill.

Currently Major Contractors, such as ourselves, are forced to comply with Registration Laws, Workers Compensation Laws, Liability Insurance laws, etc. and we feel that it is in the best interest of the public that all who offer contracting services be bound by equal rules.

Thank you for your favorable consideration of this Bill.

Sincerely,
STAR SERVICE, INC.

Plumbing *Heating* *Air Conditioning* *Industrial Piping*

RICH'S MODERN FLOORING

713 MAIN BILLINGS, MONTANA 59105 248-3656

RESIDENTIAL AND COMMERCIAL

WALL TO WALL CARPET — RUGS — LINOLEUM — TILE — DRAPERY

SENATE LABOR & EMPLOYMENT
EXHIBIT NO. 16
DATE Feb 18, 1995
BILL NO. SB 354

February 17, 1995

Senate Committee

To Whom It May Concern:

We are in support of Senate Bill #354.

Sincerely,

Richard A Miller

Richard A. Miller

Montana
Building
Industry
Association

Christopher J. Racicot
Executive Director
Suite 4D, Power Block
Helena, Montana 59601
(406) 442-4479
(406) 442-4483 Fax

1994-1995 Officers
President
Stan Helgeson, Billings
First Vice President
Bob Ross, Jr., Kalispell
Second Vice President
Sam Gates, Missoula
Treasurer
Mark Meek, Helena
Past President
Eugene Graf, Bozeman
Builder Director
Mark Lindsay, Helena
National Representative
Tim Dean, Bozeman
Associate Director
Frank Armknecht, Bozeman
Build PAC Director
Jim Caras, Missoula

EXHIBIT NO. 17
DATE 2-18-95
BILL NO. SB 354

February 18, 1995

Senate Labor and Industry Committee
Montana State Legislature
Helena, Montana

Re: Senate Bill 354
Contractor Registration / Licensing

Dear Senator Tom Keating and Committee Members:

My name is Chris Racicot and I am the Executive Officer for the Montana Building Industry Association. For the Committee's benefit it is necessary to make one distinction very clear up front. The only difference between licensing and registration are competency requirements/entrance exams, and continuing education requirements. Other than that registration and licensing are synonymous terms in every regard.

The concept of licensing or registration has some merit if a need is determined and it is done properly, however, this bill has not been properly thought through and as a consequence does little to accomplish any good for Montana.

This bill has been touted as an answer to some of the Independent Contractor and Workers' Compensation issues which exist in the construction industry in Montana. However, this bill will not solve those issues - it will merely burden those legitimate contractors who follow existing laws and create an even tighter underground construction economy than presently exists today.

The construction industry in Montana has been completely precluded from the development of this bill. In-fact only one person in Montana has had any input to this Washington based law. Even if this issue was one of public health and safety - excluding the regulated industry would still be inappropriate. This bill was introduced just one week prior to this hearing and this was the first time the industry has had any chance to see its content. This is not a good way to begin public policy in Montana. Especially, in light of the fact that the Washington based law for which this is modeled is severely flawed. (Ref. Tom McCabe's letter from the Building Industry Association of Washington.)

The concept of licensing or registration is not new to the building industry. Recently the MBIA commissioned a statewide licensing committee with representatives from every local chapter in the state to study the issue in cooperation with other interested organizations such as the:

Montana Contractors Association,
Surety industry of Montana,
Department of Commerce,
Department of Labor and Industry,
State Fund and city and county governments

to study and draft a complete proposal for possible consideration in the next legislative session. This issue demands time and deliberation of all the implications and details involved. Montana's industries must be a part of that process. With that, here are some specifics about the bill itself.

1. **New Section 4**
In reference to the title, this bill does not directly address the Independent Contractor Exemption Issue in any way. In fact, it may create a conflict with current law. (More information regarding this conflict is available from the MBIA's legal council.)

2. **Program Location**
This bill proposes to locate this program in the Department of Labor, however the administrating government agency needs to be a pro-business entity familiar with professional occupational licensing administration and enforcement.

Recently, a bill that transfers three other licensing programs from the Department of Labor to the Professional and Occupational Licensing Division of the Department of Commerce was introduced - it would stand to figure that this program should also be handled by the same agency for some very practical reasons. (1) the POL Division is familiar with licensing, (2) they are setup for the administrative, legal, investigative and enforcement challenges.

3. **New Section 3 and 15**
The only way to enforce these new sections under this proposal is through the County Attorney, which is not at all a successful route. All the licensing boards (at the POL Division) have had experience in this area and only a very small percentage ever get prosecuted. If this is to be routed through the administrative hearing process with the Attorney General's office to be acting on behalf of the DOLI as the hearings examiner, the amount of cases would severely tie-up the Agency Legal Services Bureau of the Department of Justice at a cost of $53 per hour.

This cost pencils out to an estimated $2000+ per case just in the costs for the hearing examiner. The costs for the in-house council representing the DOLI would be as much or more for preparing and trying the case. With all the potential claims against the surety bonds that would arise the fiscal impact could be into the hundreds of thousands of dollars annually.

4. **New Section 6**
This bill would be an administrative nightmare to have each registrant be up for renewal at different times instead of having one renewal date and a grace period. To illustrate, one contractor might be good for the one year, another contractor whose bond is only good for six months would only be registered and effective for the six months, yet the fees paid would be the same.

5. **New Section 8**
This section sets the issuance, renewal and reinstatement of certificates at a maximum of $50. For approximately 8000 contractors this would provide $400,000. How is this going to support the enforcement needed for the program? For example, New Section 11 states that contractors must show the contractor's current registration number on advertising. The enforcement of this section alone would be very costly because again enforcement is through the administrative hearing process. Since this is one of the biggest problems this program will be faced with, will the program have the resources to enforce this section. Same with New Section 13.

6. **Public Contractors License Program**
It does not combine or abolish the present and worthless Public Contractors License Program which is just an excise tax depositing approximately $255,000 into the state general fund annually. Instead it creates an additional license in another agency for the same construction industry professional.

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DATE 2-18-95
SB 384

7. **Public Education**
This bill has no funds specifically set aside to educate the consumer or the industry about the program or anyone's responsibilities. We as a private industry on the other hand, have developed a consumer information brochure that we will try to cooperatively distribute to each point of contact a consumer may have with the construction industry (such as lumber and hardware outlets, banks, trade associations, government agencies, etc.). (See the enclosed example of the brochure entitled **STOP Protect yourself and you home before you hire a contractor**.)

This bill does little to serve and protect the pubic dealing with the construction industry. Texas as big and as populated as it is - along with 18 other states does not have any type of contractor licensing or registration. If Texas is functioning okay without licensing surely Montana can do better. Most of the problems with contractors and the public evolve from vague contractual agreements and consumers not doing their homework and being personally responsible.

It is difficult for the State of Montana to protect its consumers from unprofessional business practices if the consumers are not willing to educate and protect themselves first.

8. **Competency Requirements**
There are no provisions for entrance exams and continuing education requirements. Again, in the discussions throughout the MBIA's different local chapters, many individual groups want these requirements if there is to be a licensing or registration program. If the State of Montana truly wants to protect the consumer, competency requirements should be a part of this process.

9. **Industry Based Board**
This legislation provides nothing for the creation of an industry based board to deal with complaints and licensing issues. Many of the ideas in this bill are just not going to be enforceable or arbitrated if a board is not an intimate part of the makeup of any registration or licensing program. Additionally, the exceptionally high legal costs outlined in this bill could be almost eliminated if a board were established to arbitrate complaints and claims.

10. **Administrative Rule Making Process**
Many of the details of this law should not remain with the administrative rule making process. Particularly if there is no industry representation in the form of a board.

11. **Fines**
All funds from fines and violations are deposited into the general fund and do not offset the costs of enforcement of the program. It is in direct contradiction with the new model legislation to allow an agency to recover some of the investigative fees expended in necessary enforcement practices.

12. **More Regulation**
This bill creates further regulations on the construction industry and opens the door for more regulations down the road while it does little to protect the already legitimate operator. It makes no sense in this era of less regulation, less government and less spending to add another useless program to the public's purse.

13. **Bonds**
The fees, bonds and insurance's must be fair and affordable to small and large contractors. Surety bonds are difficult to obtain and therefore can preclude some contractors from doing business especially in the rural areas of Montana. Further, is the surety bond a (1) penalty bond or (2) is it a bond for specific damages?

14. **Rural Impact**

With this bill and its requirements, restrictions and regulations many rural areas may be limited in the services available from the construction industry. This will happen simply because many small contractors will not be able to or want to comply with this new program nor, on-the-other-hand, will they want to break the law so many will just stop doing business. As a result, affordable housing will be negatively impacted. Further, a window for an underground economy will be open for those who will operate and not comply with the program. How many tax dollars and work comp dollars will we see go with that business?

15. **A True Licensing Program**

A true licensing program should basically do the following:

a. Protect consumers.
b. Protect legitimate contractors.
c. Protect the State of Montana.
d. Enhance the quality of service and products delivered by construction industry.
e. Force out-of-state firms working in Montana to follow Montana law.
f. Spread responsibility of withholding and tax obligations to all in the construction industry.
g. Encourage all contractors to follow existing laws by closing many of the loopholes.

This bill does little to further any of these.

16. **Enforcement**

Enforcement should be the right of anyone with a vested interest in an open project. They may include, but should not be limited to, the following individuals:

a. property owner,
b. general and/or sub contractor,
c. State of Montana DOLI, DOC, and/or DOR field investigators or safety inspectors,
d. city/county building permit officials,
e. bank or mortgage officials,
f. city/county law enforcement officials.

The program should also implement specific enforcement and complaint mechanisms to include:

g. 800 # Inquiry System to verify status of application and licensing requirements,
h. specific complaint process and penalties,
i. an 8 member industry based complaint and arbitration board,
j. an audit process,
k. 4 - 6 agency investigators to inspect complaints.

17. **Timelines**

This bill should have some specific Timing guidelines, such as:

a. Program to be in place by October 1, 199-.
b. One time 90-day application grace period to end December 31, 199-.
c. Annual renewal period to run from February 1 to January 31 of each year.

Basically, this is just a **LET'S MAKE SURE EVERYONE HAS WORK COMP** bill. There are few problems with the present work comp and independent contractor exemption laws. The problems do exist are being addressed through the work comp reform efforts of the past two years and monitored by for example the Work Comp Fraud Team. The true problems with the work comp and independent contractor exemption laws are not with present statute, but rather with the non-compliance of the statute - and unfortunately no matter how much we try - it is difficult to legislate compliance. Montana already has too many laws that are not enforceable - let's not create any more.

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SB 384

In visiting with one individual interested in this issue, it was suggested that perhaps we should pass this bill with an amendment that would render this bill active in January of 1997 and work out some of the details in dispute during the interim. At first glance this may not be a bad idea, however this is exactly why many of the laws that come out of this legislature fail to be good, effective and enforceable laws. With a plan such as that - we are put in a position of breaking something just so we can fix it. Why put a broken program in place and then work to fix it, it would be much more prudent to:

1. Gather all the involved interests.
2. Identify all potential problems.
3. Research and organize and all potential solutions.
4. Implement proper solutions to correct the problem right the first time.

Therefore, due to the fact that there are so many differences of opinion within our own organization (MBIA) that we must resolve and the fact that this proposal has surfaced at such a late date (2-10-95) during this legislative session with almost no input from someone in Montana, we must oppose Senate Bill 354 in its entirety.

Thank you for your consideration and please kill this bill.

Sincerely,

Christopher J Racicot
Executive Director

Building Industry Association of Washington

Post Office Box 1909 • Olympia, WA 98507 • 1-800-228-4229 • (360) 352-7800

February 16, 1995

18
Feb 18, 1995
BILL NO. SB 3847

Chris Racicot, Executive Vice President
Montanta Home Builders Association
7 W. 6th Avenue, Suite 4-D
Power Block Building
Helena, MT 59601

Dear Chris:

Pursuant to our discussion, here's some information on Washington State's registered contractor law.

The law which went into effect in the late 1960's was a compromise--consumer groups and some builders were calling for builder licensing and testing.

The registered contractor law has had some benefits. Consumers, homebuyers, etc. can now check and see if a contractor is registered. Further, the registration requires the contractor to post a bond and provide some minimal insurance. So, if problems occur in the construction process, homebuyers may get some relief.

The registered contractor law has also created some difficulties. For starters, the law has not really been enforced by Washington's Department of Labor and Industries. It is easy for builders to avoid getting registered. Consequences are limited. And, L&I projects that today--after 25 years with this law and many amendments--over 30% of contractors are not registered.

Cities and counties have been unwilling to take any responsibility for enforcement.

Further, labor organizations have successfully fought BIAW's efforts to amend the law to require employees to take some responsibility. Currently, if an employee is injured while working for an unregistered contractor, his medical, retraining and other claims costs are paid by registered contractors (out of the workman's compensation pool). Over 30% of claims filed in the construction industry come from employees of unregistered contractors. So registered contractors pay premiums which are 30% too high.

BIAW continues to try to modify our state's contractor registration law and make it workable. But until it's enforced by L&I and until local governments and workers take some responsibility, the law will always be flawed.

Best regards.

Sincerely,

Tom McCabe
Executive Vice President

tom\racicot.216

EXHIBIT 19
DATE Feb 18, 1995
BILL NO. SB 354

TESTIMONY ON SENATE BILL 354

Mr. Chairman and members of the committee my name is Bob Durand.

I have been affiliated in the surety industry for 24 years and have been active in underwriting contractor for contract and license bonds for that time. I am currently doing business consulting/surety.

I have been asked to review Senate Bill 354 by Chris Racicot of the Montana Building Industry Association for my input and to share my opinions as the bill required surety bonds. I will go through some of the section of this bill and offer my views.

SECTION 1 - Purpose is to afford protection to the public from unreliable fraudulent, financially irresponsible or incompetent contractors.

- This type of protection require the state or regulating body to not only license contractors working the in the state of Montana but also to investigate the contractors similarity to how a surety company would underwrite a contractor. Bonds are not another insurance policy. Bonding can be best compared to high grade financing or qualifying at a bank for a loan. The larger the bond the more difficult it is to qualify. Again the smaller contractor is the one that has the problem qualifying. They need to do a thorough check into the 3 C's of bonding, cash, character and capacity.

  - Cash can be verified with appropriate financial information.
  - Character reflects on ones knowledge and business traits possible credit referencing.
  - Capacity related to past experience in the field acquired knowledge of the industry and the ability to obtain appropriate insurance and surety needs.

All of these issues are noted in Section 4 <u>Application for registration.</u> However, the knowledge and staff to accomplish this task in not in place and needs to be extensive to do the job correctly.

SECTION 13 - Disclosure statement requirement refers to contracts between 1,000 and $60,000 with no apparent requirements for contracts in excess of $60,000. The bond requirement in their <u>"notice to customers"</u> is for $6 M for a general and $4 M for a

specialty contractor that has been posted with the State of Montana. This may infer that a consumer has protection to $6 M in the event of claim on his contract. I think this is somewhat misleading for the following reason.

Say we have 10 consumers that have a contract with the same contractor for say $10 M each and he has slipped by the investigation and licensing process and in fact is not reliable and does not compete his projects. There will be 10 consumers trying to get a part of the $6,000. Really not much is available to each of them. Then when we get to the specialty trades were less may be available as that is only $4, 000. Let me take this one step further and say these contractors are unable to obtain a surety bond. They then need to place a cash or other type of property bond with the state. This cash bond could dilute the contractors working capitol and help in his demise as he does not have all of his cash available to pay subcontractors or suppliers.

Just a couple of examples here that might clarify this:

Lets take roofing contractors. Say we have a heavy hail year where our existing instate contractors cannot complete the needed work in a reasonable time. This will entice out of state contractors to flood into Montana and soak up the excess. Say each of these contractors does 20 roofs all unsatisfactorily. The $4,000 bond requirement for a specialty trade doesn't give much protection to the consumer.

Another problem I observed a number of years ago was in Bozeman. They had a couple of contractors from out of state that specialized in putting on fireplaces to existing houses. The fireplaces they installed were not done to codes and ultimately resulted in fires in a number of those residences. The city of Bozeman attempted to license these contractors and ultimately required a $10,000 surety bond from these contractors. Not only would sureties not write these bonds but by the time they found that out the contractors had already moved on.

SECTION 30 - Appears to require another bond in the same amounts i.e. $6M for general and $4M for specialty but for the protection on employees for wage and fringe benefits. So now we have 2 bond requirements, one to protect the consumer for $6M/4M respectively and one to protect the employee for $6M/$4M respectively. Again the contractor can furnish a surety, cash or other securities for a bond. This again may dilute the all important cash a contractor needs for his day to day operations if he has to post a cash bond.

SECTION 31 (2) - Surety must be named in the suit. This would be unacceptable to any of the sureties I know and preclude them from writing those bonds.

The State of Washington has a $50,000 bond requirement for their

EXHIBIT 19
DATE 2-18-95
SB 354

contractors. These bonds are extremely difficult to obtain and are considered only for the large contractors. The smaller contractor who is unable to acquire this bond eliminates their ability to comply to this law. I hear they are having problems with enforcement. This needs to be evaluated.

I do feel the concept for Contractor Licensing in this state is a good one but a bit premature. I also feel that much input needs to be gathered and evaluated prior to implementing a law that may not be enforceable.

I would suggest input be gathered from all surrounding states including Oregon & Washington, the surety industry, the Montana Building Industry and the Montana Contractors Association and evaluated to assist in making the issue workable. The Builders, Contractors and Sureties in Montana are interested in protecting their businesses and reputations. Their input is critical.

A committee needs to be established and funded to evaluate this complicated issue and make their recommendations to all interested parties in making this legislation workable. I would be glad to answer any questions now or after this session

February 15, 1995

EXHIBIT NO. 20
DATE Feb 18, 1995
BILL NO. SB 354

Honorable Thomas Keating
Montana State Legislature
Capitol Station
Helena, MT 59620

HOME BUILDERS ASSOCIATION OF BILLINGS

Dear Senator Keating:

The Home Builders Association of Billings would like to request that you oppose Senator Gary Forrester's bill, Senate Bill 354, to require Contractor **REGISTRATION**. Our association and its 183 members, as well as the other five local NAHB affiliates in Montana, are opposed to this legislation for many reasons. It may surprise you to know that we are generally in favor of Contractor **LICENSING** and have begun the research to present a bill to the 1997 Legislature that would require licensing of all contractors and sub-contractors. The time necessary to research and present a piece of legislation that will serve the best interests of the consumers, as well as the building industry, is not available during this session.

In meetings and discussions within our association, our members have targeted several areas of concern that we feel any piece of legislation should address. These concern are:

1. The licensing process should completely monitor workman's compensation, liability insurance and appropriate bonding, plus it should provide reporting of violations or non-compliance for general contractors.

2. There should be an enforcement mechanism with some "teeth" in it. There has to be a strong penalty for non-compliance, but that must be balanced with penalties that are in proportion to the work being done.

3. An arbitration board to determine the legitimacy of claims must be mandatory. This board would deal with claims between the consumers and the general contractors as well as between the general contractors and subcontractors.

4. Enforcement at the local level. In order to obtain a building permit, an applicant would have to provide his license number. Unfortunately, this would not be applicable to individuals building their own homes.

5. The fees collected could only be used to support this program. Fines should be used to offset the cost of investigation and prosecution of violators. Funds should also be generated to allow for public education to use only licensed contractors.

P.O. Box 875 ■ Billings, MT 59103 ■ 406-252-7533

6. The licensing must be administered through the Department of Commerce. This Department currently regulates and oversees most professional licensing and understands the needs of the professionals involved as well as the consumers they are charged with protecting.

7. Electricians and plumbers should be held to the same standards in reference to Work Comp, liability insurance and bonding requirements. The association feels that they are some areas that are already licensed and the need to coordinate efforts to eliminate double licensing fees needs to be carefully scrutinized.

8. In order to be licensed in construction you should be competent to perform the tasks for which you are licensed. Testing and continuing education must be considered.

Unfortunately, Senator Forester's bill does not address even one of these concerns and is in effect, a tax on the construction industry and its employers. It will not protect consumers, legitimate contractors, or help the Work Comp system because those determined to circumvent the law will be able to come in, do shoddy work at reduced rates, and disappear before overworked County Attorneys or investigators covering large areas can find and prosecute them.

We are asking you to vote against Senaste Bill354 and give the Montana construction industry the time to write legislation that will protect the consumers, legitimate general constractors, subcontractors, and not impose a financial burden on the state, the construction industry, and the home buyers in Montana.

Sincerely,

Gay A. Rye

Gay A. Rye
Executive Officer

WESTERN STATES INSURANCE AGENCY
255 Bridge Street · P.O. Box 160
Bigfork, Montana 59911
406/837-5281
Fax 406/837-3540

SENATE COMMITTEE ON EXHIBIT NO. 21
DATE Feb 16, 1995
BILL NO. SB 354

FEBRUARY 16, 1995

LABOR AND EMPLOYMENT RELATIONS COMMITTEE
MONTANA SENATE
HELENA, MONTANA

RE: SB354

DEAR SENATORS:

IT HAS COME TO MY ATTENTION THAT CONSIDERABLE ADDITIONAL WORK AND DISCUSSION IS NECESSARY BEFORE A LICENSING ACT SUCH AS THE ONE BEFORE YOU BECOMES LAW. PLEASE TABLE THIS MATTER OR UNTIL SUCH TIME THAT ALL INTERESTED PARTIES MAY HAVE AN OPPORTUNTITY TO PROVIDE THEIR INPUT AND EXPERTISE. THANK YOU FOR YOUR CONTINUING WORK.

SINCERELY,

JOHN AGNEW

Risks & Liabilities

When hiring a contractor or acting as your own general contractor:

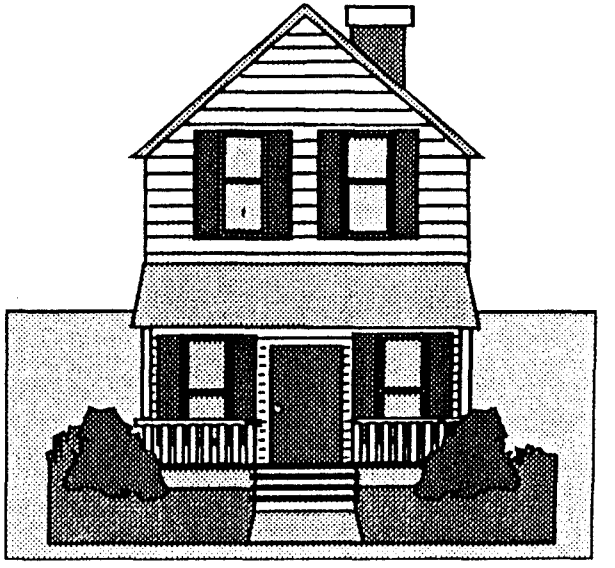
- You are responsible for the medical and time loss costs of employees injured while working on your home/project.
- You may be held liable for all unpaid taxes owed to the State.
- Your homeowner's insurance may not cover work done by an uninsured contractor.
- The law requires complete disclosure of all work that has been done on your home, if you resell. You may be required to re-do work done without permits, or inspections. Non-disclosure can lead to civil action being taken against you.
- You may be placing yourself and your family in a life threatening situation, especially when hiring unlicensed people to install: plumbing, electrical wiring, heating systems, or security systems.
- Suppliers can lien your home for non-payment of materials by your contractor.
- Unpaid workers can lien your property. When problems arise, your only recourse is a lengthy and costly civil action - if there are any assets of value to attach, and you can find the contractor.

SENATE LABOR & EMPLOYMENT
EXHIBIT NO. 22
DATE Feb 16 1995
BILL NO.

Recipient Name
Address Line 1
Address Line 2
Address Line 3

STOP!

Protect Yourself and Your Home Before You Hire A Contractor



sponsored by
Montana Building Industry Association
Suite 4D, Power Block Building
Helena, Montana 59601
406-442-4479

Tips to Hiring a Contractor

Questions to Ask!

⇒ Are they a local company?
⇒ How long have they been in business?
⇒ What type of work do they do?
⇒ Do they belong to a local association?
⇒ Have they done similar jobs?
⇒ Have they done work requiring permits?
⇒ Do they have local work references to check? Supplier references?
⇒ Can they provide a copy of their liability and work comp insurance certificate?

Get three different bids!

⇒ Bids that are noticeably lower than all the others, should be questioned. The difference may be in the quality of material(s) to be used, experience of the crew doing the actual work, something missed on the bid requirements, or it can be an indication that the contractor is not covering all the legitimate business costs, costs that may come back on you!

Don't be afraid to ask other questions!

⇒ Good communication with your contractor is vital to a successful project It helps clarify exactly what you want done.

Permits are for your protection!

⇒ Make sure all permits are in place and inspections are made as the work progresses. Make sure the name of your contractor appears on the permit.

Do your homework!

⇒ Check the references thoroughly. Go see past work and talk with the homeowners.

What should be in a Contract

1 Agreed price, including permit fees, if applicable.
2 Specify exactly what work is to be performed and the materials to be used.
3 Start and completion dates.
4 Put everything in writing.
5 Discuss the possible problems and inconveniences, such as who is responsible for cost overruns, agreement for obtaining draws as work progresses, and whose responsibility is it to clean up work area each day.
6 Put all decision(s) in writing.
7 Be cautious about paying in advance.
8 Avoid making final payment before completion, or until you are satisfied and have received a lien release.

SENATE LABOR & EMPLOYMENT
EXHIBIT NO. 10
DATE Feb 16, 1995
BILL NO.

As Work Progresses

- Make sure all permits are in place and inspections are in order.
- Ask questions. If you do not like or understand an answer, STOP the work until you do.
- Do not make final payment until you are satisfied.

Lien Law Information

1 Disclosure statement of registration, expiration date, and amount of bond should be given to you at the time the contract is signed (if the cost is over $1,000).
2 You should receive construction lien information, so you can take steps to protect yourself. (Contact your lender, or attorney for further information.)
3 Montana law says you have final responsibility to see that all bills are paid in full.
4 Make final payment contingent upon receiving a lien release for labor and materials used on your project.

Be Smart.
It is up to you to protect yourself and your home.

EXHIBIT
DATE 2-18-95
BILL NO. SB 354

Amendments to Senate Bill No. 354
First Reading Copy

Requested by Senator Forrester
For the Senate Committee on Labor and Employment Relations

Prepared by Eddye McClure
February 18, 1995

1. Page 3, line 9.
Following: "proof of"
Insert: "compliance with"
Following: "compensation"
Strike: "coverage"
Insert: "laws"

2. Page 3, line 10.
Following: "proof of"
Insert: "compliance with"
Following: "insurance"
Insert: "laws"

3. Page 3, line 16.
Strike: "or"

4. Page 3, line 17.
Strike: "statutory"
Insert: "registered"
Following: "agent"
Strike: ", if any,"
Following: "corporation"
Insert: "; or
(iv) the managers of a manager-managed limited liability company or the members of a member-managed limited liability company and the registered agent if the applicant is a limited liability company"

5. Page 4, line 12.
Following: "expires"
Insert: "or any applicable exemption terminates"

SENATE LABOR & EMPLOYMENT
EXHIBIT NO. 24
DATE 2-18-95
BILL NO. 384

Amendments to Senate Bill No. 384
First Reading Copy

Requested by Senator Benedict
For the Senate Committee on Labor and Employment Relations

Prepared by Eddye McClure
February 17, 1995

1. Title, line 11.
Following: "33-16-303,"
Insert: "33-16-403,"

2. Page 5, lines 18, 21, 24 and 29.
Following: "Each"
Strike: "plan No. 2 and plan No. 3"

3. Page 5, lines 19, 22, and 25.
Following: "the"
Insert: "designated"

4. Page 5, lines 26 through 28.
Following: "commissioner" on line 26
Strike: remainder of line 26 through "39-71-2316(5)" on line 28

5. Page 5, line 30.
Following: second "the"
Insert: "designated"

6. Page 6, line 8.
Following: "The"
Insert: "designated"

7. Page 6, line 13.
Insert: "NEW SECTION. **Section 6. Plan No. 3 membership in licensed workers' compensation advisory organization -- reporting requirements.** (1) The plan No. 3 insurer under Title 39, chapter 71, part 23, is required to be a member of a licensed workers' compensation advisory organization or a licensed workers' compensation rating organization under Title 33, chapter 16, part 4.

(2) If the plan No. 3 insurer is not a member of the workers' compensation advisory organization designated under [section 5], then, subject to the deviations from the uniform statistical plan, uniform classification system, and uniform experience rating plans that may be approved by the board of directors of the plan No. 3 insurer as provided in 39-71-2316(5), the insurer shall:

(a) record and report its workers' compensation experience to the designated advisory organization as required in the uniform statistical plan of the designated workers' compensation advisory organization approved by the commissioner, the uniform classification system, and the uniform experience rating plan that have been filed by the designated advisory organization with

and approved by the commissioner; and

(b) use the forms and adhere to the rules that the designated advisory organization develops and files with the commissioner under [section 5]."

Renumber: subsequent sections

8. Page 6, line 29.
Following: "(1)"
Strike: "The"
Insert: "A"

9. Page 7, line 8.
Strike: "8(2)"
Insert: "9(2)"

10. Page 7, line 11.
Page 9, line 27.
Following: "organization"
Insert: "designated under [section 5]"

11. Page 7, line 18.
Following: "by"
Strike: "an"
Insert: "the designated"
Strike: "7(1)"
Insert: "8(1)"

12. Page 7, line 19.
Strike: "8(1)"
Insert: "9(1)"

13. Page 8, line 7.
Strike: "13"
Insert: "14"

14. Page 10, line 21.
Page 11, line 5.
Strike: "7"
Insert: "8"

15. Page 12, line 1.
Following: "factors."
Insert: "Individual risk premium modification factors may be disseminated to:

(a) a licensed producer or a plan No. 2 or plan No. 3 insurer for the business of insurance only; and

(b) the department of labor and industry for regulatory purposes only. Individual employer payroll and loss information may be provided to a person other than the current licensed producer or a plan No. 2 or plan No. 3 insurer only after obtaining the employer's written permission."

16. Page 12, line 4.
Strike: "14"

EXHIBIT 24
DATE 2-18-95
SB 384

Insert: "15"

17. Page 12, line 9.
Page 13, line 8.
Page 19, lines 6 and 8.
Following: "through" or "through"
Strike: "17" or "17"
Insert: "18"

18. Page 12, line 13.
Following: "of an"
Strike: "advisory"
Following: "or"
Insert: "an advisory"

19. Page 13, line 17.
Insert: "**Section 20.** Section 33-16-403, MCA, is amended to read:

"**33-16-403. Examination of application and investigation of applicant -- issuance of license -- fee.** (1) The commissioner shall examine each application for license to act as a rating organization pursuant to this part or a workers' compensation advisory organization pursuant to part 10 and the documents filed ~~therewith~~ with the application and may make such further investigation of the applicant, its affairs, and its proposed plan of business as ~~he deems~~ the commissioner considers desirable.

(2) The commissioner shall issue the license applied for within 60 days of its filing ~~with him~~ if, from ~~such~~ the examination and investigation, ~~he~~ the commissioner is satisfied that:

(a) the business reputation of the applicant and its officers is good;

(b) the facilities of the applicant are adequate to enable it to furnish the services it proposes to furnish;

(c) the applicant and its proposed plan of operation conform to the requirements of this chapter.

(3) Otherwise, but only after hearing upon notice, the commissioner shall, in writing, deny the application and notify the applicant of ~~his~~ the decision and ~~his~~ the reasons therefor.

(4) The commissioner may grant an application in part only and issue a license to act as a rating or workers' compensation advisory organization for one or more of the classes of insurance or subdivisions thereof or class of risk, or a part or combination thereof as are specified in the application, if the applicant qualifies for only a portion of the classes applied for.

(5) ~~Licenses~~ (a) Except as provided in subsection (5)(b), licenses issued pursuant to this section ~~shall~~ remain in effect until revoked as provided in this chapter. The fee for the license ~~shall be~~ is $100 annually ~~which shall~~ and must be deposited in the general fund.

(b) Each workers' compensation advisory organization is required to renew its license annually"

{*Internal References to 33-16-403: None.*}
Renumber: subsequent sections

20. Page 16, line 6.
Page 17, line 29.
Following: "by the"
Insert: "designated"

21. Page 17, line 10.
Following: "organization"
Insert: ", designated under [section 5],"

22. Page 18, line 18.
Following: line 17
Strike: "the"
Insert: "a licensed workers' compensation"
Following: "organization"
Strike: "designated by the commissioner of insurance under [section 5]"
Insert: "or a licensed workers' compensation rating organization under Title 33, chapter 16, part 4,"

23. Page 18, line 19.
Following: "~~employment~~"
Strike: "uniform classification system and experience rating plan"
Insert: "classifications of employment"

24. Page 18, line 20.
Following: "~~rates~~"
Insert: "designated workers' compensation"
Following: "organization"
Insert: ", as provided in Title 33, chapter 16, part 10, and corresponding rates"
Following: "rates."
Insert: "Except as provided in Title 33, chapter 16, part 10, a workers' compensation advisory organization or other person may not, without first obtaining the written permission of the employer, use, sell, or distribute an employer's specific payroll or loss information, including but not limited to experience modification factors."

GRAY BILL WITH PROPOSED BENEDICT AMENDMENTS

** PROPOSED AMENDMENTS SHOWN IN BOLD CAPS

SB0384.01

Senate Bill No. 384

Introduced By

EXHIBIT #23
DATE Feb 15, 1995
BILL NO. SB 384

A Bill for an Act entitled: "An Act generally revising the workers' compensation insurance rating laws; providing definitions; providing for the determination of a competitive workers' compensation market; requiring the commissioner of insurance to designate an advisory organization; authorizing the filing and adoption by an insurer of an advisory organization's prospective loss costs; authorizing an insurer to file its own rates and supplementary rate information; providing for rate review; eliminating the requirement that a rating organization file workers' compensation rates; amending sections 33-16-303, **33-16-403,** 33-16-1002, 33-16-1011, 33-16-1012, 39-71-435, 39-71-2204, 39-71-2205, 39-71-2211, and 39-71-2316, MCA; repealing sections 33-16-1004 and 33-16-1005, MCA; and providing an applicability date."

Be it enacted by the Legislature of the State of Montana:

The original of this document is stored at the Historical Society at 225 North Roberts Street, Helena, MT 59620-1201. The phone number is 444-2694.

finitions. As used in this
pply:
ndards" means the standards adopted by the casualty actuarial society in its Statement of Principles Regarding Property and Casualty Insurance Ratemaking

SENATE LABOR & EMPLOYMENT
EXHIBIT NO. 26
DATE 2-18-95
BILL NO. SB 374

Amendments to Senate Bill No. 374
First Reading Copy

Requested by Senator Harp
For the Senate Committee on Labor and Employment Relations

Prepared by Eddye McClure
February 17, 1995

1. Title, lines 7 and 8.
Following: "OBLIGATION;" on line 7
Strike: remainder of line 7 through "CHARGE;" on line 8

2. Title, line 10.
Strike: "OR PRIVATE"

3. Title, line 11.
Strike: "MAKING IT OPTIONAL FOR"
Insert: "REQUIRING"
Following: "LICENSED"
Insert: "ADVISORY OR"

4. Title, line 12.
Following: "PROHIBITING"
Insert: ", WITH EXCEPTIONS,"

5. Title, lines 13 and 14.
Following: ";" on line 13
Strike: remainder of line 13 through "MEMBER;" on line 14

6. Page 2, line 14.
Following: "obligation"
Insert: "and the default remains unsatisfied"

7. Page 2, line 20.
Following: "provide"
Insert: "related"

8. Page 2, lines 22 and 23.
Following: "~~employer~~"
Strike: reminder of line 22 through "costs" on line 23
Insert: "charge a minimum yearly premium to cover its administrative costs for coverage of a small employer"

9. Page 2, line 27.
Strike: "or private"

10. Page 3, line 9.
Following: "~~must~~"
Strike: "may"
Insert: "is required to"
Following: "a"
Insert: "licensed"

11. Page 3, lines 10, 11 and 12.
Following: "compensation"
Strike: "rating"
Insert: "advisory"
Following: "organization" on line 10
Insert: "or a licensed workers' compensation rating organization under Title 33, chapter 16, part 4,"

12. Page 3, line 11.
Following: "~~council~~"
Strike: "a"
Insert: "the designated"
Following: "organization"
Insert: ", as provided in Title 33, chapter 16, part 10,"

13. Page 3, line 12.
Following: "rates."
Strike: "A"
Insert: "Except as provided in Title 33, chapter 16, part 10, a"

14. Page 3, line 13.
Strike: "or the state fund"

15. Page 3, lines 14 through 18.
Following: "factors."
Strike: remainder of line 14 through "board." on line 18

16. Page 4, line 13.
Insert: "NEW SECTION. **Section 5. Coordination instruction.** If [this act] is passed and approved and if it amends 39-71-2316, then Senate Bill No. 21 is void."
Renumber: subsequent section

DATE February 18, 1995

SENATE COMMITTEE ON Labor & Employment Relations

BILLS BEING HEARD TODAY: SB 348, HB 354, SB 384

< ■ > PLEASE PRINT < ■ >

Name	Representing	Bill No.	Check One: Support	Check One: Oppose
JEFF ENGEL	HBA BILLINGS; MBIA	354		✓
TIM DEAN	TIM DEAN CONST. - BOZEMAN	354		✓
Charles R. Brooks	MT Food Dist. Assoc	354	✓	
Jacqueline Lenmark	Am. Ins. Ass'n	348		✓
Jacqueline Lenmark	AIA	354	✓	
Jacqueline Lenmark	AIA	384	✓	
Frank Cote / intl	Ins. Comm'r	384	✓	
Stan Kelley	NCCI	384	✓	
Dave Cogley	Wilwood Homes / HBIA	354		✓
George Wood	MT Self Insurers Assoc	348		✓
" "	" " " "	354	✓	
Pat Ford	Hamlin Const / Helena HBIA	354		✓
Michael Leedy	MSSF	348	X	
Bob Wood Thingtha	MMIP	348		—

VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY

REGISTER.F10

DATE February 18, 1995

SENATE COMMITTEE ON Labor & Emp. Relations

BILLS BEING HEARD TODAY: SB 354

< ■ > PLEASE PRINT < ■ >

Name	Representing	Bill No.	Check One: Support	Check One: Oppose
David Ouzel	MT Chamber	SB 354	X	
Vernon R. Zuboforse	Bigs SELF	SB 354	X	
Jerry Driscoll	MT State Building Trades	SB 354	X	
MYLES M. EGAN	Mtg. ASSOC. OF REALTORS	SB 354		X
Fred Stevenson	Prestige Homes	SB 354	X	
Nancy Butler	State Fund	SB 348 SB 384	with amend. X	X

VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY

REGISTER.F10

DATE February 18, 1995

SENATE COMMITTEE ON Labor & Employment Relations

BILLS BEING HEARD TODAY: SB 348
SB 354
SB 384

< ■ > PLEASE PRINT < ■ >

Check One

Name	Representing	Bill No.	Support	Oppose
ROBERT DURAND	Montana Building Industry MBIA Assn.	354		✓
Bob Ross Kalispell	MBIA Ross Const	354		✓
Chris Racicot	Montana Building Industry	354		✓
GAY A. RYE	Home Builders Association of Billings	354		✓
ANDY SKINNER	SKINNER ENTERPRISES	354		✓
STAN HELGESON	MBIA - BILLINGS S.D. HELGESON HOMES	354		✓
HARDY EDMONSON BOZEMAN	MBIA	354		✓
Debra Fulton	MSBA	348	✓	
Howard Bailey	MSSF	348	✓	
Ray Bancroft	Montana Association of Counties	348		
Bill Pierce	MBIA Helena Pierce & Assoc. Bldrs.	354		✓
RICHARD HELGESON	HBA BILLINGS	354		✓
DARWIN NISSEN	MBIA	354		✓
W. James Kembel	City of Billings	354	✓	

VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY

REGISTER.F10

MINUTES

MONTANA HOUSE OF REPRESENTATIVES
54th LEGISLATURE - REGULAR SESSION

COMMITTEE ON BUSINESS & LABOR

Call to Order: By **CHAIRMAN BRUCE T. SIMON**, on March 6, 1995, at 10:00 AM.

ROLL CALL

Members Present:

Rep. Bruce T. Simon, Chairman (R)
Rep. Norm Mills, Vice Chairman (Majority) (R)
Rep. Robert J. "Bob" Pavlovich, Vice Chairman (Minority) (D)
Rep. Vicki Cocchiarella (D)
Rep. Charles R. Devaney (R)
Rep. Alvin A. Ellis, Jr. (R)
Rep. David Ewer (D)
Rep. Rose Forbes (R)
Rep. Jack R. Herron (R)
Rep. Bob Keenan (R)
Rep. Don Larson (D)
Rep. Rod Marshall (R)
Rep. Jeanette S. McKee (R)
Rep. Karl Ohs (R)
Rep. Paul Sliter (R)
Rep. Carley Tuss (D)
Rep. Joe Barnett (R)

Members Excused: Rep. Jon Ellingson

Members Absent: None.

Staff Present: Stephen Maly, Legislative Council
Alberta Strachan, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing: SB 375, SB 384
Executive Action: HB 574

HEARING ON SB 375

Opening Statement by Sponsor:

SEN. STEVE BENEDICT, SD 30, Ravalli County, said this bill was an act generally revising workers' compensation and occupation disease laws; authorizing payment of medical claims without

acceptance of liability; requiring insurers to act promptly on claims; defining "objective medical findings" and requiring injury and disability to be established by objective medical findings; revising the definition of "injury"; defining actual wage loss; revising requirements to receive permanent partial disability benefits; revising provisions regarding termination of benefits upon retirement; revising provisions for lump-sum conversions; allowing suspension of benefits while a claimant is incarcerated for a misdemeanor; revising the definition of disabled worker; exempting payment agreements between a preferred provider organization and an insurer from prescription drug payment limits; revising rehabilitation benefits; authorizing the workers' compensation court judge to stay proceedings in certain circumstances; revising the definition of "wages"; authorizing a reduction of benefits for third-party recoveries; authorizing the termination of temporary total benefits upon notification of a worker's release to return to work; requiring a sole proprietor, partner, corporate officer, or manager or member of a limited liability company or a designee to provide notice of injury within 30 days; authorizing termination of certain benefits for noncooperation with a rehabilitation provider; revising the filing time for occupational disease claims; revising provisions for payment of medical expenses in occupational disease claims and extending temporary partial disability benefits.

Proponents' Testimony:

Nancy Butler, General Counsel, State Fund, explained the sections in the bill.

Laurie Ekenger, Governor's Office, said he supported the bill but there are two major objectives for the system. The system provides good responsive time and service to the people that it is designed to help which are the workers and employers of Montana. The second factor is the rates for Montana should be as competitive as they can possibly be. There have been many successes in the Workers' Compensation system because of the work of management teams and the work of the legislative body. There is now some statistical data to move forward with, and the proposals in the bill which were based upon a close claim study and comparison with other states.

Chuck Hunter, Department of Labor and Industry, said they favored this bill. There are some very good system improvements which bring new insured performance standards to workers' compensation. This bill would enable faster payments to beneficiaries, provide more detail to injured workers and make timely benefit payments when they are ready. The result will be better service. The time of wage loss and return to work is another objective.

Rick Hill, Board of Directors, State Fund, explained the charts which he had displayed on the various percentage factors of workers' compensation benefits.

Terry Menton, Chairman, Coalition for Workers' Compensation System Improvement, said this bill would tighten and bring into qualifications to receive wage loss and rehabilitation benefits. It would provide for those truly deserving.

David Owen, Chamber of Commerce, indicated they supported the bill.

Riley Johnson, National Federation of Independent Businesses, provided written testimony from several proponents of the bill. **EXHIBIT 1**

Robert White, Chamber of Commerce of Bozeman, said they supported the bill.

Harlee Thompson, Manager, Intermountain Truss and Treasurer, Workers' Compensation Improvement, said Montana has the highest Workers' Compensation rates and the highest Workers' Compensation benefit structures in the nation and the lowest wages in the nation. **EXHIBIT 2**

Charles Brooks, Chamber of Commerce in Billings, said they had a deep concern for the need of major reform in the Workers' Compensation system. There are, however, some concerns which should be addressed. The establishment and clearly defined benefits of permanent partial disability and adjustments and the restructure of benefits were also discussed. **EXHIBIT 3**

Steve Turkiewicz, Executive Vice President, Montana Automobile Dealers Association, supported this bill.

Kurt Langin, Montana Motor Carriers Association, stated they supported this bill.

Joe Roberts, Rehabilitation Association of Montana, supported the bill.

Jim Kembel, Liberty Northwest Insurance Corporation, supported the bill.

George Wood, Executive Secretary, Montana Self Insurers Association, supported the bill.

Jacqueline Lenmark, American Insurance Association, supported the bill.

Bob Worthington, Program Administrator, MMIA, said they insured towns across Montana and supported the bill.

Opponents' Testimony:

Jerry Driscoll, Montana Building Construction Trades Council, said there are no safety engineers ever sent from the State Fund to make certain a working place is safe. The Safety Culture Act

was drafted last session which has never been implemented. Under the 1987 law, after 18 months of study of 18 private citizens and two legislators decided to have the State Fund introduce their own bill. Under that law it was guaranteed 500 weeks of wage loss if there was one-half of one percent impairment. The 1991 law was a percent of 350 weeks plus trying to get some true rehabilitation. The average now is 103 weeks. The rates in this state were artificially set by politics. Since 1987 politics needed to get out of the rate making.

Jennifer Drueger, President, Montana Academy of Physician Assistants, said they opposed this bill because of the restrictions placed on physician assistants. This bill would restrict the treating of Workers' Compensation patients unless a physician is unavailable. **EXHIBIT 4**

Russell Hill, Executive Director, Montana Trial Lawyers Association, said this bill allows the State Fund to publicly declare its love for Montana's most vulnerable workers while privately abusing and humiliating them with no fear of accountability. **EXHIBIT 5**

Don Judge, Montana AFL-CIO, said this was bad legislation and also stated they were willing to work with anyone on the Workers' Compensation system of Montana. Labor was never involved in drafting this bill. It is not a good bill.

Randy Spear said the current political forces can tolerate more intrusive government. There is no promise of cost savings in this bill's current language. **EXHIBIT 6**

Steve Shapiro, Montana Nurses Association, stated the committee should adopt the amendments which would add in the advanced practice registered nurses in the definition of treating physician. **EXHIBIT 7**

Norm Grossfield, Attorney, Claimants and Insurers, said he was involved in the compromises in 1991 and 1993 and considered some of the efforts are a breach of the understandings which were reached. There are concerns about subrogation.

Informational Testimony:

Ann K. Ingram, Occupational Health Services, EXHIBIT 8; Bill Shaw, M.D., Billings Clinic, EXHIBIT 9; David Johnson, The Billings Clinic, EXHIBIT 10

Technical Testimony:

Stan Kaleczyc, National Council on Compensation Insurance, said they estimate the impact legislation such as this bill would prospectively have, would have a great affect on rates in Montana. This analysis has now been completed and was not done at the time of the hearing in the Senate. If the bill is adopted

as presented there is no change in rates and with this bill in place there would be a 10.3% decrease in rates in the advisory filing.

TAPE 1, SIDE B

Questions From Committee Members and Responses:

REP. VICKI COCCHIARELLA asked what the potential risk is to the state regarding erosion of exclusive remedy. **Mr. Grossfield** said his concerns were that in 1987, groups negotiated agreements in the reductions in benefits. Permanent partial benefits were discussed with a decrease in time and rehabilitation benefits. This bill does just the opposite. Now the rehabilitation industry will come back and individuals can do anything they want and therefore this negates almost in its entirety, a rehabilitation program. It also negates any true permanent partial benefits because of the involvement of the wage loss scheme. It removes the objectivity. The Supreme Court has said that because of the constitution, full subrogation recovery cannot be achieved unless the claimant has been made whole.

REP. PAVLOVICH asked what would have happened if this bill would have been in effect before 1973. **Mr. Hill** said this law proposes at the point at which the claimant is released to return to work, benefits would be terminated instead of a 14-day notice.

REP. LARSON said he was convinced the high rates were the fault of the inflater, the middleman and the lawyers. He then asked for discussion on the physicians assistants' amendments. **Mr. Hill** said they were not opposed to working for the State Fund. The law is where there are not other treating physicians, then they can be a treating physician.

REP. MILLS questioned the lack of safety inspections from the perspective of the agency. **Carl Swanson, President, State Fund,** said there is a high priority on safety over the past year. Much is happening focus-wise in the safety area. The importance of that department has been elevated. There is a strategic business plan in operation which focuses on various aspects of safety. There are approximately 275 employers who benchmark the severity of accidents. He said he disagreed with **Mr. Driscoll's** comments. **REP. MILLS** asked how many inspections had been done. **Mr. Swanson** said over the past year 96 safety education workshops, 1,737 customers received safety surveys. There are a significant number of consulting services on job hazards and safety in 2400 policy holder locations. **REP. MILLS** said his question was specific as to how many safety inspections on site have been made in the last two years. **Mr. Swanson** said 2,401.

REP. EWER asked if permanent partial disability benefits were a typical benefit. **Mr. Hill** said yes. **REP. EWER** asked if states predicate those that must be an actual wage loss as a result of the injury for someone to be cut from permanent partial

disability. **Mr. Hill** said the formulas most states pay an impairment payment. Some states have a supplemental disability benefit and some require wage loss be an element. **REP. EWER** asked if the impairment was the only feature of the bill. **Mr. Hill** said if the person does not incur a wage loss, the only thing they would be entitled to is impairment.

REP. COCCHIARELLA asked for **SEN. BENEDICT'S** ideas on cutting benefits and his previous statements in another hearing. **SEN. BENEDICT** said **REP. COCCHIARELLA** would need to retrieve that testimony.

REP. COCCHIARELLA asked if the closed claims study is a reliable and valid study. **REP. BENEDICT** said it was as close as it could be.

REP. COCCHIARELLA asked if he had seen the closed claim study. **SEN. BENEDICT** said yes the committee did go through much work in the select committee in trying to come up with a criteria for objective medical problems. The thing which slowed the committee down was trying to determine which one of the guides to use and how should they go about objective medical findings. They are difficult. If a doctor states there is nothing to support the finding of pain, there is no higher power they can go to in saying what is causing the pain.

REP. COCCHIARELLA said perhaps the State Fund would have picked up the case of Mr. Wilkens but there was no diagnostic measure, no way for the physician to determine where the pain was coming from, he would have then been able to collect Workers' Compensation benefits. **SEN. BENEDICT** said that neither **REP. COCCHIARELLA** nor **SEN. BENEDICT** are medical doctors and he does not believe that she can say this bill will take away that person's right to have an objective medical treatment from a doctor. That is conjecture. He still feels remorse for her constituent. Everyone in the room has a constituent like that. They will try as hard as the system will allow to take care of every problem in the world, but there needs to be a point where they need to rely on an objective medical finding from a doctor.

REP. TUSS questioned the tone of the inspections. **Mr. Swanson** said he had not been on any individual inspections. The directions of the safety efforts is to be working as a partner with the customers. There is little accomplished through inspection. The quality of effort needs to analyzed. Customers need to be educated in those areas and working as partners with them to realize the safety savings that can be realized.

REP. TUSS asked what percentage of the work places are covered by that number. **Mr. Swanson** said there are approximately 25,000 customers.

REP. TUSS asked if there were a duplication of effort between what is happening at the State Fund level and the Department of

Labor and Industry. **Mr. Hunter** said the only duplication which exists is the educational effort.

REP. EWER asked if premiums will be reduced by 8% or 10%. **Mr. Hill** said that is the intention.

Closing by Sponsor:

The sponsor closed.

HEARING ON SB 384

Opening Statement by Sponsor:

SEN. BENEDICT said this bill was important to the employers of Montana as it is designed to refine the ground rules for a competitive marketplace for Plan II insurers which offers workers' compensation coverage in Montana. This bill is a must for the monitoring of the marketplace to make sure rates being charged are not excessive nor unfairly discriminatory. It is a technical revision bill.

Proponents' Testimony:

Jacqueline Lenmark, American Insurance Association, provided written testimony. **EXHIBIT 11**

Nancy Butler, State Fund, said in the bill, the Insurance Commissioners have designated one advisory organization. Plan II insurers must belong to that designated advisory organization. The State Fund is now required to be a member of the NCCI. She then explained the changes in the bill.

Stan Kaleczyc, NCCI, said this bill would provide better information that will benefit the consumers of Workers' compensation insurance and the industry.

Frank Coty, Deputy Insurance Commissioner, said the State Auditor's Office supported the bill. This bill would create a more competitive marketplace in Montana for Workers' Compensation insurance. The insurance department regulates Plan II or private workers' compensation carriers in Montana. They do not regulate the State Fund or self-insurers. This bill would allow private carriers to file and use rates and not have to stay with the rates prescribed by rating organizations. This measure allows for more competition in rates as long as those rates are not excessive, inadequate or unfairly discriminatory. It has been the view of the Commission they should foster competition in the marketplace and provide consumers with more choices.

Opponents' Testimony:

None.

Questions From Committee Members and Responses:

None.

Closing by Sponsor:

The sponsor closed.

EXECUTIVE ACTION ON SB 574

Motion: REP. PAUL SLITER MOVED SB 572 BE CONCURRED IN. REP. LARSON MOVED THE LARSON AMENDMENTS.

Discussion:

REP. LARSON explained the conceptual amendment.

REP. JEANETTE MCKEE said she favored the amendment. The agencies in her area cannot make it on the salary they received.

REP. ELLINGSON said he supported the amendment but opposed the bill. He then reviewed the fiscal note.

REP. OHS said he favored the amendment.

Vote: Motion carried to adopt the Larson amendments 11-7 with REPS. EWER, SLITER, ELLIS, DEVANEY, FORBES, SIMON and MILLS voting no.

Motion: REP. MCKEE MOVED THE MCKEE AMENDMENTS. REP. MCKEE WITHDREW HER AMENDMENTS.

Motion: REP. SLITER MOVED THE BENEDICT AMENDMENTS.

Discussion:

Steven Maly explained the Sponsor's amendments.

Gary Blewett, Liquor Division, Department of Revenue, explained the Sponsor's amendments further.

Vote: Motion carried 17-1 to adopt the Sponsor's amendments with REP. EWER voting no.

Motion: REP. PAVLOVICH MOVED THE #1 PAVLOVICH AMENDMENTS.

Discussion:

REP. PAVLOVICH explained the Pavlovich amendment.

REP. ELLIS said this amendments does not affect the merits of the bill because these amendments are two sections of the law that are not in the bill.

REP. PAVLOVICH said the amendments fell within the scope of the bill.

Vote: **Motion carried to adopt the #1 Pavlovich amendment 11-7 with REPS. EWER, HERRON, SLITER, KEENAN, FORBES, SIMON and DEVANEY voting no.**

Motion: **REP. PAVLOVICH MOVED THE #2 PAVLOVICH AMENDMENTS.**

Discussion:

Steven Maly explained the second Pavlovich amendment.

REP. ELLIS said he opposed the amendment.

REP. LARSON said he favored the amendment.

Vote: **Motion failed to adopt the #2 Pavlovich amendment 9-8 with REPS. MILLS, PAVLOVICH, BARNETT, COCCHIARELLA ELLINGSON, KEENAN, LARSON, MCKEE and TUSS voting yes.**

Motion/Vote: **REP. SLITER MOVED SB 574 BE CONCURRED IN AS AMENDED. A roll call vote was taken which failed 8-10 with REPS. SIMON, DEVANEY, FORBES, HERRON, MCKEE, OHS and SLITER voting yes.**

Motion/Vote: **REP. DEVANEY MOVED TO TABLE SB 354. Motion carried 16-2 with REPS. SLITER and SIMON voting no.**

ADJOURNMENT

Adjournment: 12:00 P.M.

BRUCE T. SIMON, Chairman

ALBERTA STRACHAN, Secretary

BTS/ajs

HOUSE OF REPRESENTATIVES

Business and Labor

ROLL CALL DATE 2-6-95

NAME	PRESENT	ABSENT	EXCUSED
Rep. Bruce Simon, Chairman	X		
Rep. Norm Mills, Vice Chairman, Majority	X		
Rep. Bob Pavlovich, Vice Chairman, Minority	X		
Rep. Joe Barnett	X		
Rep. Vicki Cocchiarella	X		
Rep. Charles Devaney	X		
Rep. Jon Ellingson			X
Rep. Alvin Ellis, Jr.	X		
Rep. David Ewer	X		
Rep. Rose Forbes	X		
Rep. Jack Herron	X		
Rep. Bob Keenan	X		
Rep. Don Larson	X		
Rep. Rod Marshall	X		
Rep. Jeanette McKee	X		
Rep. Karl Ohs	X		
Rep. Paul Sliter	X		
Rep. Carley Tuss	X		

HOUSE STANDING COMMITTEE REPORT

March 7, 1995

Mr. Speaker: We, the committee on **Business and Labor** report that **House Bill 574** (first reading copy -- white) **do pass as amended.**

Signed: _____
Bruce Simon, Chair

And, that such amendments read:

1. Title, line 20.
Following: "AGREE;"
Insert: "PROVIDING TIME LIMITS RELATING TO GRANTING OR DENYING A LICENSE;"

2. Title, line 23.
Following: "16-4-105,"
Insert: "16-4-207,"
Following: "16-4-401,"
Insert: "16-4-405,"

3. Page 5, line 16.
Following: "must"
Insert: ", in the calculation of the commission rates,"

4. Page 6, lines 12 and 13.
Following: second "store" on line 12
Insert: "established after [the effective date of this act]"

5. Page 6, line 14.
Following: "store"
Insert: "established after [the effective date of this act]"

Committee Vote:
Yes 12, No 6.

531301SC.Hbk

6. Page 16, line 13.
Following: "(4)"
Strike: "Agency"
Insert: "The department shall negotiate commissions with agency stores, and agency"

7. Page 16, line 14.
Strike: "10% commission"
Insert: "commission of 10% or more, but not to exceed 15%,"

8. Page 28, line 3.
Insert: "**Section 36.** Section 16-4-207, MCA, is amended to read:

"**16-4-207. Notice of application -- investigation -- publication -- protest.** (1) When an application has been filed with the department for a license to sell alcoholic beverages at retail or to transfer a retail license, the department shall review the application for completeness and to determine whether the applicant or the premises to be licensed meets criteria provided by law. The department shall request that the department of justice investigate the application as provided in 16-4-402. If after the investigation the department does not discover a basis to deny the application, the department shall promptly publish in a newspaper of general circulation in the city, town, or county from which the application comes a notice that the applicant has made application for a retail license and that protests against the issuance of a license to the applicant by a person who has extended credit to the transferor or residents of the county from which the application comes or adjoining Montana counties may be mailed to a named administrator in the department of revenue within 10 days after the final notice is published. Notice of application for a new license must be published once a week for 4 consecutive weeks. Notice of application for transfer of a license must be published once a week for 2 consecutive weeks. Notice may be substantially in the following form:

NOTICE OF APPLICATION FOR RETAIL ALL-BEVERAGES LICENSE

Notice is given that on the .... day of ...., 19.., one (name of applicant) filed an application for a retail all-beverages license with the Montana department of revenue, to be used at (describe location of premises where beverages are to be sold). A person who has extended credit to the transferor and residents of ..... counties may protest against the issuance of the license. Protests may be mailed to ...., department of revenue, Helena, Montana, on or before the .... day of ...., 19...

Dated ..... Signed .....
ADMINISTRATOR

(2) Each applicant shall, at the time of filing an application, pay to the department an amount sufficient to cover the costs of publishing the notice.

(3) If the administrator receives no written protests, the department may issue or transfer the license without holding a public hearing. If the issuance or transfer of a license is made without holding a public hearing, the issuance or transfer must be completed within 40 days of the last date of publication under subsection (1). If written protests by a person who has extended credit to the transferor or residents of the county from which the application comes or adjoining Montana counties against the issuance or transfer of the license are received, the department shall hold a public hearing. Unless a later date is set by agreement between the applicant and the department, the public hearing must be held within 30 days of the last date of publication under subsection (1)."

Renumber: subsequent sections

9. Page 31, line 5.

Insert: "**Section 38.** Section 16-4-405, MCA, is amended to read:

"**16-4-405. Denial of license -- timeliness.** (1) The department may deny the issuance of a retail alcoholic beverages license if it determines that the premises proposed for licensing are off regular police beats and cannot be properly policed by local authorities.

(2) A retail license may not be issued by the department for a premises situated within a zone of a city or town where the sale of alcoholic beverages is prohibited by ordinance, a certified copy of which has been filed with the department.

(3) A license under this code may not be issued if the department finds from the evidence at the hearing held pursuant to 16-4-207(3) that:

(a) the welfare of the people residing in the vicinity of the premises for which the license is desired will be adversely and seriously affected;

(b) there is not a public convenience and necessity justification;

(c) the applicant or the premises proposed for licensing fail to meet the eligibility or suitability criteria established by this code; or

(d) the purposes of this code will not be carried out by the issuance of the license.

(4) The hearings examiner shall issue a proposed decision to grant or deny a license within 60 days after holding a public hearing under 16-4-207. Within 45 days of the expiration of the time period for written exceptions or, if there are oral arguments, within 45 days after oral arguments are held before

the department, the department shall either grant or deny a license application.""

10. Page 33, line 22.
Following: "[Section"
Strike: "24"
Insert: "26"

-END-

HOUSE OF REPRESENTATIVES

BUSINESS AND LABOR COMMITTEE

ROLL CALL VOTE

DATE 3-6-95 BILL NO. HB574 NUMBER _____

MOTION: Do pass as amend

NAME	AYE	NO
Rep. Bruce Simon, Chairman	✓	
Rep. Norm Mills, Vice Chair, Maj.		✓
Rep. Bob Pavlovich, Vice Chair, Min.		✓
Rep. Joe Barnett	✓	✓
Rep. Vicki Cocchiarella		✓
Rep. Charles Devaney	✓	
Rep. Jon Ellingson		✓
Rep. Alvin Ellis, Jr.	✓	
Rep. David Ewer		✓
Rep. Rose Forbes	✓	
Rep. Jack Herron	✓	
Rep. Bob Keenan		✓
Rep. Don Larson		✓
Rep. Rod Marshall		✓
Rep. Jeanette McKee	✓	
Rep. Karl Ohs	✓	
Rep. Paul Sliter	✓	
Rep. Carley Tuss		✓

EXHIBIT 1
DATE 3-6-95
HB SB375

HOLLY SUGAR CORPORATION
P.O. BOX 1168
SIDNEY, MT 59270

DATE: MARCH 3, 1995
TIME:

FACSIMILE COVER LETTER

PLEASE DIVERT THE FOLLOWING PAGES TO:

NAME: HOUSE BUSINESS AND LABOR COMMITTEE
COMPANY:

FROM: RICHARD S. PARRILL--HOLLY SUGAR CORPORATION
SIDNEY, MONTANA

A TOTAL OF ONE PAGES (INCLUDING THIS COVER SHEET) ARE BEING TRANSMITTED. IF YOU DO NOT RECEIVE ALL PAGES, PLEASE CALL (406) 482-3303. FOR FUTURE REFERENCE, OUR TELECOPY PHONE NUMBER IS (406) 482-5892.

MESSAGE:

HOLLY SUGAR SUPPORTS YOUR ACTION TO APPROVE SB375. WORKMEN'S COMPENSATION COSTS NEED TO BE REDUCED AND THIS BILL ADDRESSES ONE OF THOSE COSTS THAT CAN BE ELIMINATED.

THANK YOU FOR YOUR EFFORTS.

RICHARD S. PARRILL

HOLLY SUGAR CORPORATION
A SUBSIDIARY OF IMPERIAL HOLLY CORPORATION

The original of this document is stored at the Historical Society at 225 North Roberts Street, Helena, MT 59620-1201. The phone number is 444-2694.

** TOTAL PAGE.001 **

INTERMOUNTAIN
Lumber Truss

EXHIBIT 2
DATE 3-6-95
~~HB~~ SB 375

Truss Division
406/449-5553

SB 375
REVISE WORKERS' COMPENSATION AND OCCUPATIONAL DISEASE LAWS

Recommend
Do Pass

Mr. Chairman members of the committee:

I am Harlee Thompson manager of Intermountain Truss located here in Helena. I am also Treasurer of the Coalition for Work Comp System Improvement (CWCSI). I serve on the State and local board of directors for the Montana Building Industry Association (MBIA).

Because I am an employee and have a small interest in a corporation I am on both sides of the fence when it comes to workers compensation. I am both an employer and an employee.

Montana has among the highest Workers Comp rates in the nation. Montana has among the highest Workers Comp benefit structures in the nation. Montana has among the lowest wages in the nation.

When I see the effect the premiums paid for workers comp has on the ability to pay a decent wage I get very discouraged. When I see a young family trying to make a living on the wages that are afforded by some of the smaller companies I get discouraged.

SB 375 will cut some benefits. SB 375 will cut premiums.

We need to remember that the majority of workers that these high premiums go to protect are not the minority that receive these high benefits. The majority of our work force does not get injured on the job.
As a result of more safety awareness in the work place the number of injuries will go down.

If reducing benefits will reduce premiums and make a higher salary available to the majority of workers and it will create a better business climate that will encourage new business and expansion of current businesses then that is what needs to be done. SB 375 will do this!

The CWCSI and the MBIA and I encourage you to pass SB 375.

Thank You.

790 Nicole • P.O. Box 5898 • Helena, Montana 59604 • FAX 406/449-5554

EXHIBIT 3
DATE 3-6-95
HB SB 375

TESTIMONY
HOUSE BUSINESS & LABOR COMMITTEE
MARCH 6,1995
SB 375

Mr. Chairman and members of the committee for the record I am Charles Brooks from Billing, representing the Billings Area Chamber of Commerce. The Chamber has over the years had a deep concern for the need of major reform in our workers comp system. We applaud the progress made todate by the current management. SB 375 in our judgement continues to address some of our concerns. The Chamber before the session began, drafted a position paper stating some concerns that need to be address.

1. Establish and clearlly define the benefits of permanent partial disability.

2. As one of the high benefit states, we certainly need to have adjustments to and restructure benefits.

3. We feel that SB 375 addresses these concerns. WE ask your favorable consideration of SB 375 with a do pass.

Thank you for this opportunity to appear before you.

MAPA

Montana Academy of Physician Assistants

EXHIBIT 4
DATE 3-6-95
HB SB375

A Constituent Chapter of the American Academy of Physician Assistants

TESTIMONY REGARDING SB 375

March 6, 1995

My name is Jennifer Krueger - I'm the current president of the Montana Academy of Physician Assistants (MAPA). I'm here to speak in opposition of SB 375 due to the restrictions placed on physician assistants. The current wording restricts physician assistants from treating worker's compensation patients unless a physician is unavailable. MAPA is very concerned about this restriction for the following reasons:

- PA's are fully licensed and legally permitted to treat worker's compensation patients. The American Academy of Physician Assistants (AAPA), includes the American Academy of Occupational Health PAs. This is a nationally recognized group of PAs who specialize in, among other areas, worker's compensation patients.

- There is no medical or legal basis for this exclusion. In fact, several Occupational Health Departments at Montana health care institutions recruit and employ PAs to treat worker's compensation patients.

- The exclusion of PAs will create a hardship for clinics and hospitals. To restrict PA's from treating worker's comp patients will add a financial burden to the institution, as well as a time burden to the individual physician.

- The exclusion of PAs will create a hardship for patients. Timely access to care is critical for these individuals. To restrict PAs from treating them will adversely affect the ability of the patient to obtain quality care quickly.

- The current wording is in direct conflict with national and state trends regarding medical care. Physician assistants have proven to be an invaluable asset, providing a cost-effective answer to health care shortage problems. In addition, PAs enable institutions to staff more efficiently and more cost-effectively.

Along with other members of Montana's medical community, the directors of the Occupational Health Departments at both St. Patrick's Hospital in Missoula and Billings Clinic have expressed their strong support of MAPA's viewpoint. I urge you to change the wording of SB 375 and allow physician assistants to continue providing quality care to Montana residents and a cost-effective solution for Montana. Thank you for your time.

EXHIBIT 5
DATE 3-6-95
HB SB375

Directors:
Wade Dahood
Director Emeritus
[illegible]te D. Beck
Elizabeth A. Best
Michael D. Cok
Mark S. Connell
Michael W. Cotter
Patricia O. Cotter
Karl J. Englund
Robert S. Fain, Jr.
Victor R. Halverson, Jr.
Gene R. Jarussi
Peter M. Meloy
John M. Morrison
Gregory S. Munro
David R. Paoli
Michael E. Wheat

Montana Trial Lawyers ASSOCIATION

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#1 N. Last Chance Gulch
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Officers:
Gregory S. Munro
President
Michael E. Wheat
President-Elect
Gene R. Jarussi
Vice President
John M. Morrison
Secretary-Treasurer
William A. Rossbach
Governor
Paul M. Warren
Governor

March 6, 1995

Rep. Bruce Simon, Chair
House Business Committee
Room 104, State Capitol
Helena, MT 59620

RE: SB 375

Mr. Chair, Members of the Committee:

Thank you for this opportunity to express MTLA's strongest opposition to SB 375, which would dramatically reduce workers compensation benefits for injured Montanans.

Perversely, SB 375 allows the powerful State Fund to publicly declare its love for Montana's most vulnerable workers while privately abusing and humiliating them with no fear of accountability. For example:

- The bill forces injured workers to surrender important disability benefits unless they can demonstrate wage loss--yet even when they suffer severe disabilities and lose their time-of-injury job, ***no minimum-wage employee can demonstrate wage loss if they are capable of returning to any hypothetical job at all.***
- The bill exploits seasonal workers by allowing insurance companies to manipulate periods of forced idleness when calculating average weekly wages.
- The bill brutalizes Montana's oldest workers by robbing them of their workers compensation benefits whenever they need hard-earned pension benefits to survive.

In a workers compensation system more attentive to the State Fund than to legal rot, SB 375 will produce injustices so blatant, so intolerable, that they will also prove unconstitutional. When the first minimum-wage worker suffers a disabling injury and forced unemployment due to the gross negligence of her employer, yet qualifies for no workers compensation benefits other than her paltry impairment award, SB 375 will cost that employer its exclusive-remedy protection.

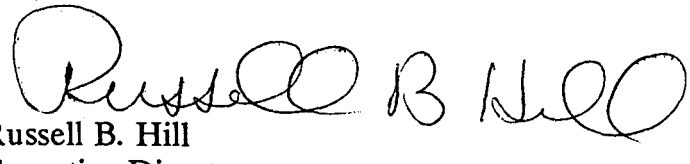
Moreover, SB 375 will encourage Montana citizens, before Montana courts, to correct one of the biggest, most wasteful, and most unpopular government failures in this state: compulsory workers compensation dominated by the State Fund. Regardless of other factors, a petition to amend Montana's constitution regarding workers compensation could:

- Benefit from years of negative publicity and continuing voter anger;
- Save Montana employers ***$250 million each year*** in mandatory workers compensation premiums, or ***$625 per employee per year***;
- Compared to SB 375, increase employer incentives nearly ***1,000 percent each year*** to create new jobs and raise wages;
- Appeal to the vast majority of Montana employees, who never qualify for a penny of workers compensation benefits and resent paying for those who do;
- Protect Montana consumers who already pay for better insurance than workers compensation policies provide--and who could otherwise collect much more generous benefits under their own policies for work-related injuries;
- Permit Montana employers and employees, together or individually, to insure against workplace injuries with more favorable and efficient types of insurance, including no-fault health, life, disability, and income-security coverage;
- Preserve workers compensation insurance for those employers and employees who freely choose it;
- Relieve the state--and the State Fund as insurer of last resort--from the costly burden of guaranteeing insurance for employers currently required by law to maintain workers compensation coverage;
- Reduce workplace injuries by making more employers fully accountable for their carelessness;
- Focus intense public attention on the chief winners and losers under Montana's current workers compensation system; and
- Force the defenders of compulsory workers compensation to mount a massive public-relations campaign against such a constitutional amendment.

In short, MTLA believes that SB 375 will convince many Montanans already fed up with their state's workers compensation system that they have little to lose and much to gain from such a petition--regardless of the final vote on a constitutional amendment.

Thank you again for this opportunity to express MTLA's opposition to SB 375. If I can provide additional information or assistance to the Committee, please allow me to do so.

Respectfully,



Russell B. Hill
Executive Director

PETITION TO PLACE CONSTITUTIONAL AMENDMENT NO. _____ ON THE ELECTION BALLOT

If 10% of the voters in each of 40 legislative districts sign this petition and the total number of voters signing this petition is _____, this constitutional amendment will appear on the next general election ballot. If a majority of voters vote for this amendment at that election, it will become part of the constitution.

We, the undersigned Montana voters, propose that the secretary of state place the following constitutional amendment on the _____, 19__, general election ballot:

AMENDING ARTICLE II, SECTION 16 OF THE MONTANA CONSTITUTION TO ALLOW EMPLOYERS AND EMPLOYEES TO REJECT WORKERS COMPENSATION COVERAGE

Article II, Section 16, of the Montana Constitution is amended to read:

"**Section 16. The administration of justice.** Courts of justice shall be open to every person, and speedy remedy afforded for every injury of person, property, or character. No person shall be deprived of this full legal redress for injury incurred in employment for which another person may be liable except as to fellow employees and his immediate employer who hired him if such immediate employer provides coverage under the Workmen's Compensation Laws of this state. No person shall be compelled to provide or accept coverage under the Workmen's Compensation Laws of this state. Right and justice shall be administered without sale, denial, or delay."

Voters are urged to read the complete text of the measure, which appears above on this sheet. A signature on this petition is only to put the constitutional amendment on the ballot and does not necessarily mean the signer agrees with the amendment.

WARNING

A person who purposefully signs a name other than his/her own to this petition or who signs more than once for the same issue at one election or signs when not a legally registered Montana voter is subject to a $500 fine, 6 months in jail, or both.

Each person must sign his/her name and address in substantially the same manner as on his/her voter registry card or the signature will not be counted.

Complete Signature	Printed Last Name	Post Office Address	Legis. District
1.			
2.			
3.			
4.			
5.			
6.			
7.			
8.			
9.			
10.			

I, _____, affirm or first being sworn, depose and say: That I circulated or assisted in circulating this petition to which this affidavit is attached and I believe the signatures thereon are genuine, are the signatures of the persons whose names they purport to be, are the signatures of Montana electors who are registered at the address following their signature, and that the signers knew the content of the petition before signing the same.

(S E A L)

_____
Signature of Petition Circulator

_____
Address of Petition Circulator (Street/P.O. Box, City, State, Zip Code)

Subscribed and sworn to me this _____ day of _____, 19__.

_____
Person Authorized to Take Oaths

_____
Title or Notarial Information

COUNTY: _____

MAILING INSTRUCTIONS TO PETITION CIRCULATORS: **Mail the completed petition sheets to FREE (Fed-up with Restrictions on Employers and Employees), P.O. Box 666, Helena MT 59624.**

EXHIBIT 6
DATE 3-6-95
HB SB 375

SENATE BILL NO. 375
3/6/94

MR. CHAIRMAN AND COMMITTEE MEMBERS:

MY NAME IS RANDY SPEAR. I AM A PHYSICIAN ASSISTANT (PA). SINCE GRADUATION FROM PA TRAINING IN 1979, I HAVE PROVIDED HEALTH CARE IN RURAL COMMUNITIES, FIRST IN IOWA AND IN MONTANA FROM 1987-1993. CURRENTLY I PROVIDE MEDICAL CARE AT THE BILLINGS CLINIC.

IN ADDITION TO MY ORAL TESTIMONY, I WISH TO SUBMIT TWO LETTERS OF CONCERN IN REGARD TO THIS BILL'S TREATMENT OF PHYSICIAN ASSISTANTS (PAs). THESE LETTERS, AS WELL AS MY TESTIMONY, SUPPORT THIS BILL AND ITS ONGOING ATTEMPT TO COST-EFFECTIVELY PROVIDE FOR HEALTH CARE NEEDS OF INJURED WORKERS. HOWEVER, WE BELIEVE AN ADDITION AMENDMENT IS NEEDED.

SECTION 39-71-116(31)(C) CURRENTLY READS: "A PHYSICIAN ASSISTANT-CERTIFIED LICENSED BY THE STATE OF MONTANA UNDER TITLE 37, CHAPTER 20, IF THERE IS NOT A PHYSICIAN, AS DEFINED IN SUBSECTION (31)(A), IN THE AREA WHERE THE PHYSICIAN ASSISTANT-CERTIFIED IS LOCATED.

I WOULD ASK THE COMMITTEE TO STRIKE ALL WORDING AFTER "TITLE 37, CHAPTER 20".

RATIONALE FOR THIS REQUEST INCLUDE:

1. The definition of "area" is nowhere defined. It is ambiguous and imprecise. Is "area" to mean a room, hallway. building, city, county, state? Dictionaries offer no geographic solution.

2. If PAs in rural, isolated areas are qualified to be considered a "treating physician", then by what reasoning are those (PAs) located in "areas" in which physicians are present being judged as unqualified to be considered a "treating physician".

3. This bill would create a dual standard among PAs with no medical or legal reasoning. The possibility of legal action on the basis of restraint of trade or class action suite seems to me to be enhanced by sustaining this language. An unnecessary risk without good rationale, I would think.

4. Some of the most experienced PAs in this state in terms of occupational medicine and Workers' Comp are currently working at the Billings Clinic with daily interaction with supervising physicians. The current language is limiting the utilization of these individuals, while allowing others with less experience and minimal

onsite supervision to function as a "treating physician". Does this seem logical?

5. Other third party carriers are looking to the language of this law to justify or question their need to cover health care services provided by PAs. Surely this must have been an unintended result of the current language?

6. National trends all provide for greater utilization of PAs. Why would restricting this groups ability to provide high quality, cost-effective health care be in the best interest of Montanans?

7. MCA 33-22-111 (copy enclosed) provides for freedom of choice of practitioners. This law specifically includes Workers' Compensation Act as an entity that must allow the insured to seek care from a PA if desired.

8. MCA 33-22-114 (copy enclosed) was specifically written to disallow any health insurance carriers selling policies within Montana to avoid paying for medical services provided by a PA if that carrier would provide payment to a physician for the same service. Is the State Fund exempt from this same law? If so, by what justification?

IN CLOSING, IT IS BEYOND ME HOW THE CURRENT POLITICAL FORCES CAN TOLERATE MORE INTRUSIVE GOVERNMENT. THERE IS NO PROMISE OF COST SAVINGS IN THIS BILL'S CURRENT LANGUAGE IN REGARD TO THIS MATTER. I WOULD CONTEND QUITE THE OPPOSITE IS TRUE.

THANK YOU MR. CHAIRMAN FOR AN OPPORTUNITY TO SPEAK ON THIS ISSUE.

EXHIBIT 7
DATE 3-6-95
~~HB~~ SB 375

March 6, 1995

Steven J. Shapiro
Montana Nurses Association

Testimony on Senate Bill 375
regarding the Workers Compensation Act

I am Steven Shapiro representing the Montana Nurses Association. MNA is composed of 1,400 registered professional nurses working in all phases of health care across the State of Montana.

Senate Bill 347 was passed in the 53rd Legislature amending various health care provisions in the Workers' Compensation Act. Section 39-71-116, MCA, was amended with a definition of "treating physician" to include a medical doctor, chiropractor, physician assistant, osteopath or dentist. Since the bill was enacted, it has been noted that advanced practice registered nurses were apparently inadvertently omitted from this definition.

Advanced practice registered nurses provide primary health care in a variety of settings in Montana and the United States. Many of them are authorized by the State Board of Nursing as independent health care practitioners, some including the authority to prescribe medications. However, they have been denied reimbursement by workers' compensation insurers because of the oversight in Senate Bill 347 (1993).

We ask the committee to adopt the attached amendment to Senate Bill 375 which would add in advanced practice registered nurses in the definition of "treating physician" in Section 39-71-116, MCA.

March 6, 1995

Steven J. Shapiro
Montana Nurses Association

Amendment offerred to Senate Bill 375

Section 5. [amending 39-71-116, MCA]

Subsection (31)

Subsection (d); following "Title 37, chapter 5;" *strike* "or"

Subsection (e), following "Title 37, chapter 4."

insert " ; or

"(f) an advanced practice registered nurse licensed by the state of Montana under Title 37, chapter 8."

-END-

EXHIBIT 8
DATE 3-6-95
HB SB375

OHS Occupational Health Service

A Division Of Claims Management Services

February 27, 1995

Mr. Steven Shapiro, Attorney-at-Law
Box 169
Clancy, Montana 59634

Dear Mr. Shapiro:

Thank you for taking such an active interest in Advanced Practice Nurses in the State of Montana. I am writing to you in regard to our telephone conversation of February 27, 1995 during which you asked me if I could give you examples of the Worker's Compensation injuries that I see. Before I list specific examples, I thought I would give you a little background information.

I am an Advanced Practice Nurse who is masters prepared, certified nationally as a Nurse Practitioner, been in practice for twelve years, eight of those dealing primarily with Worker's Compensation patients in an occupational health setting. Currently, I am employed by Applied Health Services, which is the for-profit arm of Northwest Healthcare (including Kalispell Regional Hospital) and work in the Occupational Health Service located in the hospital. I see corporation employees for both work related and non-work related health problems at no charge to the individual employee and independent of a physician.

Examples of work related injuries that I see are back injuries; lacerations; fractures; shoulder, ankle, and wrist strains; cumulative trauma, such as carpal tunnel syndrome, sick-building syndrome, exposure to HIV/AIDS, falls, etc. As a Nurse Practitioner, I take a health history from the patient to find out how and when the injury occurred, perform a physical examination, and determine if additional studies are needed to make a diagnosis, such as blood work to rule out arthritis or x-rays to rule out a fracture. Based on the results, I determine a treatment plan. This would include, but is not limited to, health education and counseling, writing prescriptions for medications, prescriptions for physical, occupational, or chiropractic therapy, and referrals to specialists (usually orthopedists if there is a fracture or surgery is indicated). This is all within the scope of practice of a Nurse Practitioner and done without consulting a physician.

In addition, I determine if the employees can return to work and if so, in what capacity. Perhaps modifications in the employee's job, such as a lifting restriction, needs to be made to keep the

310 Sunnyview Lane - Kalispell, MT 59901

received 3-3-95

employee safely at work and to allow them to recover from their injury. This prevents the employee from missing time from work and collecting Worker's Compensation benefits. It also shows the employee, by keeping him at work even though he is not at 100%, that he is still valuable to the corporation and not easily replaced. I follow the employee on a weekly basis in my office, sometimes more frequently, adjusting medications, treatment plans, and work restrictions depending on the employee's progress and independent of a physician. I communicate often with their supervisor and other health care providers, such as therapists, to facilitate the employee's return to pre-injury status.

In summary, Nurse Practitioners currently are providing cost effective care for the Worker's Compensation population that requires intensive management, not only of medical issues but socioeconomic and psychological concerns that affect their injuries and can prolong their entry back into the work force. Nurse Practitioners work well in interacting with other medical providers to coordinate optimum care and services for injured workers. To not include Nurse Practitioners as providers, yet to include Chiropractors and Physician's Assistants, most of whom have less training than Nurse Practitioners, does a great injustice to the public and to the taxpayer.

If I can be of any further assistance in helping you to understand the role of the Advanced Practice Nurse and specifically how this role relates to Worker's Compensation, please do not hesitate to contact me.

Sincerely,

Ann K. Ingram

Ann K. Ingram, R.N., M.S.N., C.A.N.P.
Occupational Health Service
Applied Health Services
Telephone: (406) 752-5111, Ext. 2036
Fax: (406) 756-4717

AKI/je

EXHIBIT 9
DATE 3-6-95
~~HB~~ SB 375

Comments before the Senate Labor Subcommittee
SB 375
2/26/95

Mr. Chairman and Committee Members:

My name is Bill Shaw. I am a physician at the Billings Clinic. As a specialist in Occupational Medicine I have spent the past decade at the Clinic caring almost exclusively for patients covered by worker's compensation. I couldn't help but notice as Sen. Benedict listed participants in formulation of this Bill that medical providers were not mentioned.

I have some specific concerns with certain portions of the bill and would like to offer some suggestions.

On page 8, lines 1-2, Physician Assistants are authorized as treating physician only when an MD is not available. The effect on my office is that 2 PA-Cs with over 30 years combined experience and special expertise in Occupational Medicine and Worker's Comp cannot act as treating physicians while a less experienced and minimally supervised provider in a remote site of Montana can. This creates 2 classes of providers which seems difficult to justify and is certainly unfair. It further flies in the face of national trends which encourages the utilization of midlevel providers as a cost effective way of providing care.

I recommend that Section 39-71-116 (31)(c) be amended to read: "a physician assistant-certified licensed by the state of Montana under Title 37, chapter 20," deleting the clause on page 8, lines 1-2.

On page 7, Lines 2-4 regarding Secondary Services, this is defined as treatment directed at disability - not impairment. Unfortunately, impairment is not defined. Using standard definitions , if strictly followed an amputee receiving a prosthesis would fall under secondary care since it is directed toward disability and not impairment and would therefore be provided on a discretionary basis.

I would recommend that the definition for impairment that is set forth in the AMA Guide to the Evaluation of Permanent Impairment be included in this bill.

On page 11, Line 9-11, liability is not present for medical care after MMI has been reached and the condition recurs in a non occupational setting. This will mean that the patient is not covered since 3rd party coverage will exclude it as a preexisting condition. For example, if a patient with a work related herniated

disc who undergoes surgery and reaches MMI, a recurrent disc which occurs a year later at home will not be covered. Clearly, that person is out of luck.

On page 16, lines 1-8, there are definitions of functional capacity. These definitions which address lifting capacity only are for too narrow. While they may be applicable to back injuries, it has little relevance to injuries to other body systems.

I would recommend expanding these definition to a broader one such as the Department of Labor - Dictionary of Occupational Titles. I would be glad to provide details and documentation for this.

On page 16, line 30, Impairment is established by objective medical findings. This definition supersedes the direction set forth in the AMA Guide which is required for use and is therefore redundant.

I would recommend that paragraph (b) of this section be used alone which will suffice for physicians in this arena.

Finally, I would make a comment on one of the thrusts of this bill having to do with Objective Medical Findings. This is found in the definition on page 5, lines 1-2. While I understand and applaud the intent of these provisions, as a physician, I can attest that I regularly see patients with real problems in whom I have great difficulty confirming "objective findings" as defined here. I'm afraid that this definition will force me and my colleagues to play a word game in order to provide care for our patients.

Thank You.

William S. Shaw, M.D.
Director, Occupational Medical Services
Billings Clinic
Billings, MT
406-238-2710

EXHIBIT 10
DATE 3-6-95
~~HB~~ SB 375

BILLINGS CLINIC

3/3/95

S.B. 375

MR. CHAIRMAN AND COMMITTEE MEMBERS

I RESPECTFULLY REQUEST THE SUBMISSION OF THIS LETTER INTO YOUR HEARINGS ON REVISING THE WORKER COMPENSATION LAWS OF THE STATE OF MONTANA

ON PAGES 7 AND 8 OF THE 3RD READING OF THIS BILL, LINE 30 PAGE 7 & LINES 1 & 2 PAGE 8. I REQUEST YOU DELETE THE following "IF THERE IS NOT A PHYSICIAN, AS DEFINED IN SUBSECTION (3)(a), IN THE AREA WHERE THE PHYSICIAN ASSISTANT-CERTIFIED IS LOCATED. By including this SENTENCE IN THE BILL I BELIEVE IT HAS THE POTENTIAL TO NEGATIVELY AFFECT MY LEGAL CAPABILITIES TO offer CARE TO MANY OF THE PATIENTS I SEE IN THE DEPARTMENT of OCCUPATIONAL MEDICINE AT Billings Clinic WHERE I'VE BEEN EMPLOYED FOR THE PAST TEN YEARS. I AM A COST CONSCIOUS, ETHICAL, HEALTH CARE PROFESSIONAL who SINCERELY WORKS on BEHALF of THE PATIENTS I SEE, BUT I ALSO KEEP in MIND THE SIGNIFICANT IMPACT MY DECISIONS CAN HAVE ON EMPLOYERS AND INSURANCE PROVIDERS AS WELL. MOST of THE PATIENTS I SEE RECOVER FULLY in A VERY SHORT PERIOD of TIME AND RETURN TO FULL, UNRESTRICTED WORK WITH NO NEED FOR IMPAIRMENT RATINGS OR PERMANENT PARTIAL DISABILITIES. PLEASE ALLOW ME TO CONTINUE OFFERING THIS CARE TO PATIENTS AT Billings Clinic.

Billings Clinic Downtown, 2825 8th Avenue North, P.O. Box 35100, Billings, MT 59107-5100 (406) 238-2710

Montana Toll Free: 1-800-332-7156 Toll Free: 1-800-458-6634

I HAVE TWENTY NINE YEARS of EXPERIENCE IN THE HEALTH CARE FIELD, THE PAST FOURTEEN specifically in OCCUPATIONAL MEDICINE AND ANOTHER TEN IN TWO BUSY CALIFORNIA EMERGENCY ROOMS. I'VE DONE OCCUPATIONAL MEDICINE WITH ATLANTIC Richfield oil COMPANY AND ALSO WITH GENERAL MOTORS. I'm A VETERAN WITH EXPERIENCE AS A MEDICAL CORPSMAN IN VIETNAM. FOR ANY of YOU WHO CARE I VOTE ON THE REPUBLICAN SIDE of THE TICKET. BELIEVE ME I'm COST CONSCIOUS AS YOU ARE PLEASE ALLOW PHYSICIAN ASSISTANTS LIKE ME TO PRACTICE good MEDICINE WITH THE DIRECT SUPERVISION of EXCELLENT Role MODELS, OUR SUPERVISORS.

PLEASE CONSIDER DELETING THE 2ND HALF of THE LEGISLATION which NEGATIVELY IMPACTS P.A.'s

THANK YOU,
MOST RESPECTFULLY,

David P. Johnson PAC

David Johnson, PA/C - William S. Shaw, M.D.
Occupational Medicine / Work Care
The Billings Clinic
P. O. Box 35100
Billings, Montana 59107-5100
406-238-2710

EXHIBIT 11
DATE 3-6-95
HB SB384

MONTANA COMPETITIVE RATING
FOR WORKERS' COMPENSATION COVERAGE
SENATE BILL 384
TESTIMONY OF JACQUELINE T. LENMARK FOR
THE AMERICAN INSURANCE ASSOCIATION

Mr. Chairman and members of the committee:

My name is Jacqueline Lenmark. I am a lawyer from Helena and a lobbyist for the American Insurance Association. The American Insurance Association is a national trade association that promotes the economic, legislative, and public standing of its some 250-member property-casualty insurance companies, before federal and state legislatures on matters of industry concern.

AIA thanks Senator Benedict for bringing SB 384. It will represent a major step forward in inducing competition amongst private workers' compensation insurers and thus encourage economies and lower costs in Montana's workers' compensation market.

The Current System:

Montana workers' compensation rates for the private companies (Plan 2 carriers) are currently set by the Classification and Rating Committee. The C & R Committee is a statutory committee (MCA Section 33-16-1011) made up of two insurance company representatives, an employer, an insurance agent and a representative of the State Fund. Proposed rates are filed with the C & R Committee by the National Council on Compensation Insurance [NCCI]. Insurers are required to submit loss and expense data to NCCI. The data are actuarially evaluated to predict costs over the following year. Aggregation of industry-wide loss and expense data affords greater accuracy and promotes competition.

A rate request consists of many elements: the estimate of losses expected over the ensuing year (known as loss costs or pure premium, adjusted for trend and loss development), loss adjustment expenses (the cost incurred by claims management), operating costs, taxes, assessments, license fees, other fees, and average insurance company profit.

Once approved by the C&R Committee, the rates are filed with the Insurance Commissioner. Insurance companies are required to use the filed rates, although they are permitted to deviate slightly from the filed rate based on individual company experience.

The result is that Montana policyholders do not get the full benefit of a competitive market for prices when they look to purchase workers' compensation insurance.

Years ago, when the law was first passed, the database to provide rating information was not as sophisticated and advanced as it is now. The law was appropriate for its time. It no longer is. In recent years, some states have modernized insurance commissioner oversight of workers' compensation ratemaking. There is a trend among the states to rely more on individual insurers to develop their own expenses. The terms "open competition," "competitive rating," or "loss cost rating" often are used to describe these approaches.

What Will Happen to Montana Rates when Competition is Required?

Currently, like all other states 15 years ago, Plan 2 insurers are prohibited from using rates different than those approved for use in Montana. Senate Bill 384 removes the requirement that competitors on the C&R Committee set rates and require all other insurers to adhere to them to do business in the state. Each company will be required to create its own final rates to be used, based on their own expenses, profit margins, fees, overhead, etc. NCCI [or the designated organization] will continue to file information, but it will be limited to the actual costs of paying claims in the state.

The Insurance Commissioner must determine if there is a competitive market in the state, and monitor the market to insure that rates are not excessive, inadequate, nor unfairly discriminatory. The bill provides guidelines for the Insurance Commissioner to make that determination. The Commissioner has the authority to stop a company from using improper rates, and return premium if it does.

States with competitive rating laws, like Senate Bill 384, have generally seen lower rates in those states where the previous rates had been adequate because of the required competition. Rates have gone up in those states where insurers needed to increase prices to cover their costs. But rather than averaging out rates to take into account efficient and inefficient insurance company costs, prices in states with laws like Senate Bill 384 more accurately reflect individual insurance company costs.

Policyholders will have the benefit of shopping around and getting the best rate available for their business, something they cannot do now. The money businesses may save on rates can be used for business expansion, creating more jobs, higher salaries, better benefits or lower prices.

The designated workers' compensation advisory organization, under the bill, would collect information only dealing with the actual costs of paying claims in the state. Each individual insurance company would have to review their own profit factors, expenses, overhead costs, fees, etc. and arrive at their own final rates. 34 states, including Oregon, Utah, Colorado and South Dakota, have changed their rating laws over the last 12 years requiring insurers to compete.

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SB 384

Montana most recently saw a rate decrease in the "fully loaded" rates. If that trend continues, rates can be expected to go down even further, on average, because of increased competition.

Who Makes Sure Insurance Companies Compete?

The Commissioner of Insurance must determine, using quantitative data, the level of competition in the market. If the market is found to be uncompetitive, the Commissioner has the authority to impose rates. If an insurer improperly uses a rate, the Commissioner would have the power to return improperly collected premiums to policyholders, and, should the insurance company not comply, the Commissioner has the power to fine companies up to $1000 per violation, or to suspend the company's license to do business in the state.

Does the Bill Require NCCI to be the Designated Advisory Organization?

No.

The National Council on Compensation Insurance [NCCI], comprises insurance companies providing workers' compensation insurance, as well as other noninsurers. Insurers are required to submit loss and expense data to the NCCI. These data are actuarially evaluated to predict costs over the following year. Aggregation of industry-wide loss and expense data affords greater accuracy and promotes competition.

Under the current system in Montana, NCCI is the licensed statistical organization that submits advisory rate recommendations to the Insurance Commissioner for review prior to insurers' authority to use them.

Under Senate Bill 384, however, **the Insurance Commissioner may designate any rating organization that is licensed to assist him in regulating Plan 2 insurers.** It is appropriate that the Insurance Commissioner, the impartial regulator, designates the advisory organization, rather than the selection being made by insurance companies competing in the workers' compensation market.

What is the Impact on the State Fund?

The bill has no impact, in any way, on the manner in which the State Fund currently does business.

The impact is limited to the Plan 2 insurers, requiring them to compete with each other on the rates they use for Montana policyholders. Under the bill, the State Fund has the option of providing their information to other organizations.

Are Benefits Affected?

No. Senate Bill 384 does not affect who gets benefits, how many benefits they may get, how long they get benefits, nor how benefit levels are determined. The bill deals only with prices Plan 2 insurers charge, and how they arrive at those prices.

What is the Fiscal Impact on the Insurance Commissioner?

While the fiscal note indicates that there will be one FTE required under this bill, that FTE is required to regulate under the current law. **There should be no increased cost to the Commissioner's office,** save necessary expenses associated with rulemaking.

Is the Law Based on any Other Model?

Yes. The law is based on an NAIC model, adopted October 1992, which has been modified to conform to Montana's insurance regulatory scheme and the unique status of the State Fund outside that regulatory scheme. The use of that model is consistent with an increasingly large portion of the Insurance Code.

Submitted to the House Business and Labor Committee, Monday, March 6, 1995 at 10:00 am.

Jacqueline T. Lenmark

Jacqueline T. Lenmark, Esq.

EXHIBIT 11
DATE 3-6-95
SB 384

Montana Competitive Rating for Workers' Compensation Coverage Senate Bill 384

Other States With Competitive Rating Laws:

Alabama
Arkansas
California
Colorado
Connecticut
Delaware
District of Columbia
Georgia
Hawaii
Illinois
Indiana
Iowa
Kansas
Kentucky
Louisiana
Maine
Maryland
Michigan
Minnesota
Mississippi
Missouri
Nebraska
New Hampshire
New Mexico
Oklahoma
Oregon
Pennsylvania
Rhode Island
South Carolina
South Dakota
Texas
Utah
Vermont
Virginia

MONTANA COMPETITIVE RATING BILL
SB 384
SECTION BY SECTION SUMMARY PREPARED BY AMERICAN INSURANCE ASSOCIATION

Section 1 - Definitions

Sets out the new definitions of a competitive marketplace in the state, new terms related to requiring individual insurers set their own rates for policyholders, as the State Fund currently does, but does not apply to the State Fund, defines a workers' compensation advisory organization and specifies that the information filed by that organization on behalf of Plan 2 insurers is limited to the cost of paying claims in Montana and is not to include individual insurance company profit, expenses, overhead, license, fees, etc.

Section 2 - Competitive Market

A competitive market is presumed to exist, unless the Commissioner finds otherwise. The Commissioner is required to use quantitative economic analyses to measure the competitiveness of the market. That analysis is to include the number of insurers operating in the state, market shares of the insurers in the state, ease of entry into the market, market concentration and insurer profitability.

Section 3 - Ratemaking Standards and Commissioner's Review

Rates may not be excessive, inadequate or unfairly discriminatory. Standards are set out to define what constitutes excessive, inadequate and unfairly discriminatory rates, including expenses, profits, loss experience, catastrophe hazards and dividends, savings and unabsorbed premiums returned to policyholders.

Section 4 - Dividends

Dividends and other forms of premium return from insurers to policyholders are specifically permitted.

Section 5 - Advisory Organization

The Commissioner shall annually designate an advisory organization to collect data from insurers through a uniform statistical reporting plan. The advisory organization would file and have approved by the Commissioner a uniform experience rating plan to measure individual employer's safety and loss prevention effectiveness, and a uniform classification system for Plan 2 insurers. The section specifically permits plans to permit the return of premium, or premium credits or debits based on past or expected loss experience of an individual policyholder.

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Section 6 - State Fund Membership in a Rating Organization

Amendments proposed by the State Fund allow the State Fund to belong to an advisory or rating organization other than the organization designated by the Commissioner, but require the reporting of information to the Commissioner-designated organization. The State Fund would be required to provide data under the uniform statistical reporting plan, as is done currently, but would not be required to adhere to the uniform experience rating plan or classification system. These requirements do not alter the way in which the State Fund does business today.

Section 7 - Interchange of Rating Plan, Data and Cooperative Action in Ratemaking

Cooperative activity is limited to that needed to provide information to licensed advisory organizations for statistical reporting, loss experience reporting and the classification system. The Commissioner has oversight of the interchange of information. This section does not apply to the State Fund.

Section 8 - Rate Filings

The advisory organization is limited to filing information relating to the costs of paying workers' compensation claims in Montana, and is specifically prohibited from including any insurance company profit, expense, other than claim payment expenses, overhead, tax, license, fee or other individual insurance company factors in its filings. Where necessary, information from out of state may be used. Individual insurance company profits, costs, overhead, taxes, fees, etc. may not be included in the information filed by the advisory organization and must be provided to the Commissioner by the individual insurer. Insurers may adopt the loss cost filings of the advisory organization and add their expenses, profit factors, overhead, taxes, licenses, fees, etc. This section does not apply to the State Fund.

Section 9 - Rate Filing Review

Filings must be on record for review by the Commissioner a minimum of 30 days before going into effect, unless the Commissioner disapproves of the filing, requests an extension or, approves a shorter time period. This section does not apply to the State Fund.

Section 10 -- Improper Rates

If the Commissioner finds that a rate is in violation of the law, he or she shall order its discontinuance, and apply a premium adjustment to any policy then in force. If a rate is disapproved, the last approved rate shall be reimposed for the next year, unless the Commissioner approves otherwise. The Commissioner's findings must be made in accordance with accepted actuarial standards. The Commissioner shall order the return of any improperly collected premium. This section does not apply to the State Fund.

Section 11 - Restrictions on Certain Insurers

The Commissioner may require special review of an insurer's filings, if he or she finds it to be in the best interests of the insurer and policyholders of the state. This section does not apply to the State Fund.

Section 12 - Delay of Rates in a Noncompetitive Market

The Commissioner may require additional filing review time if he or she finds that a competitive market does not exist, provides written notice for an extended of the review period, or, if requests for additional information have not been met. This section does not apply to the State Fund.

Section 13 -- Consent to Rate

If a policyholder provides written agreement, a rate in excess of that otherwise approved may be used. This section does not apply to the State Fund.

Section 14 - Acts Reducing Competition Prohibited.

Insurers and advisory organizations may not

*monopolize or attempt to monopolize, combine or conspire to monopolize the business of insurance, subdivision or class;

*agree with each other to charge or to adhere to any rate or rating plan other than that filed and approved by the Commissioner to be in compliance with this act;

*agree with each other to restrain trade or lessen competition;

*agree with each other to refuse to deal with any person in relation to the sale of insurance; or

*interfere with any insurer in making its own rates or charge rates different than any other insurer.

The advisory organization may not require adherence to its rates or prevent any insurer from acting independently. This section does not apply to the State Fund, unless it chooses to belong to the designated advisory organization.

Section 15 - Advisory Organization - Permitted Activity

The advisory organization may:

*develop statistical plans including class definitions;

*collect statistical information from members, subscribers or any other source;

*prepare and distribute rate information related to the costs of paying workers' compensation claims in accordance with the statistical plan and in such detail so that insurers can interpret the information according to their own methods or interpretations;

*prepare and distribute manuals of rating rules and schedules, that do not include information which can be used to calculate final rates without additional outside information;

*distribute information that is on file with the Commissioner and open to public inspection;

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DATE 3-6-95
SB 384

*collect, compile and distribute past and present prices of individual insurers, if such information is available to the general public;
*conduct research and collect information on the impact of benefit level changes;
*prepare and distribute rules and values for the uniform rating plan; and
*calculate and disseminate premium modification factors.

This section does not affect the current business practices of the State Fund, and will not unless the State Fund chooses to belong to the designated advisory organization.

Section 16 - Advisory Organization - Prohibited Activity

The advisory organization may not compile or distribute recommendations relating to expenses, profits, overhead, taxes, licenses, fees, etc. This section does not apply to the State Fund.

Section 17 - Penalties

The Commissioner may apply a $500 fine per violation; $1000, per violation if the violation is willful to any insurer or the advisory organization. The Commissioner may suspend the license of any insurer or the advisory organization for failure to comply with an order of the Commissioner. This section does not apply to the State Fund, but will apply to the advisory organization of which the State Fund is a member if State Fund chooses membership in the designated advisory organization.

Section 18 - Appeals from the Commissioner

Appeals of an order, decision or act of the Commissioner may be appealed to District Court. This section does not affect the current business practices of the State Fund.

Section 19 - Amends Section 33-16-303, MCA

Amends the current law to clarify correct internal references.

Section 20 - Amends Section 33-16-403, MCA

Permits only one workers' compensation advisory organization may be designated at one time. The designated advisory organization must renew its license on an annual basis.

Section 21 - Amends Section 33-16-1002, MCA

Specifies that this act applies to Plan 2 insurers making of premium rates for workers' compensation or employers liability, but not reinsurance.

Section 22 - Amends Section 33-16-1011, MCA - The Classification and Rating Committee membership and term

Deletes reference to "rating organization," and replaces it with "the advisory organization designated under [section 5]."

Section 23 - Amends Section 33-16-1012, MCA - The Classification and Rating Committee Powers

Deletes the authority of the Classification and Rating Committee to establish rates.

Section 24 - Amends Section 39-71-435, MCA

Deletes reference to "rating organization," and replaces it with "the advisory organization designated under [section 5]."

Section 25 - Amends Section 39-71-2204, MCA
Section 26 - Amends Section 39-71-2205, MCA
Section 27 - Amends Section 39-71-2211, MCA

Deletes reference to the "national council on compensation insurance," and replaces it with "the advisory organization designated in section 5."

Section 28 - Amends Section 39-71-2316, MCA

Deletes reference to the "national council on compensation insurance," and replaces it with "the advisory organization designated in section 5." **With State Fund amendments**, this section requires State Fund membership in a licensed advisory organization, but not necessarily the designated advisory organization.

Section 29 - Repeals Sections 33-16-1004 and 33-16-1005, MCA, the current rating law.

Section 30 - Coordination

Section 31 - Codification

Section 32 - Saving Clause

Section 33 - Severability

Section 34 - This act is effective upon and applies to rate filings made on or after October 1, 1995.

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SB 384

MEMORANDUM

American Insurance Association

TO: Bruce Wood

FROM: David Corum

DATE: December 13, 1994

RE: Montana workers' compensation insurance market

As expected, Herfindahl-Hirschman Index (HHI) scores indicate a highly non-competitive workers' compensation insurance market in Montana. Joe Palermo explained to me that the U.S. Department of Justice uses the following guidelines in interpreting HHI results in the context of reviewing a proposed merger or acquisition. An HHI score of less than 1,000 indicates that a market is generally competitive. A 1,000-1,800 score indicates moderate competition and justifies a closer examination of specific structural features of the market in question. A score exceeding 1,800 indicates serious market problems and is likely to receive very close examination by Justice. The HHI score for Montana's workers' compensation insurance market in 1993 is 5,394. (The countrywide HHI for workers' compensation in 1993 was 302.) The sole reason for Montana's high HHI score was the State Fund's 73% market share.

Sheet1

MONTANA
WORKERS' COMPENSATION
WITHOUT STATE FUND

TOP 50 REPORT

COMPANY NAME	STAT CODE	LINE CODE	DIRECT PREMIUMS WRITTEN	MARKET SHARE (D.P.W.)	CUMULATIVE	(MARKET SHARE)2	SUM OF SQUARES
KEMPER NAT INS COS	27	14	9,853,394.00	15.68	15.68	245.9346009	736.6735102
LIBERTY MUTUAL GROUP	27	14	7,528,026.00	11.98	27.66	143.552377	
AMER INTERN GROUP	27	14	6,227,985.00	9.91	37.58	98.25237394	
CIGNA GROUP	27	14	5,393,177.00	8.58	46.16	73.67790767	
MONTANA LOGGERS EXCH	27	14	3,261,031.00	5.19	51.35	26.93753125	
ARGONAUT INS GROUP	27	14	3,247,309.00	5.17	56.52	26.71130686	
NATIONWIDE GROUP	27	14	3,097,769.00	4.93	61.45	24.30813296	
RELIANCE INS GROUP	27	14	2,994,198.00	4.77	66.21	22.70957301	
FIREMAN'S FUND COS	27	14	2,353,489.00	3.75	69.96	14.03047203	
CNA INS COMPANIES	27	14	2,004,142.00	3.19	73.15	10.17430682	
HOME INS COS	27	14	1,955,471.00	3.11	76.26	9.686138976	
TALEGEN INS GROUPS	27	14	1,936,143.00	3.08	79.34	9.495608431	
OLD REPUBLIC GEN GRP	27	14	1,559,917.00	2.48	81.83	6.163833782	
AETNA LIFE & CAS GRP	27	14	1,537,336.00	2.45	84.27	5.986672918	
LEGION INS CO	27	14	1,268,209.00	2.02	86.29	4.074080429	
ZURICH INS GROUP-U S	27	14	1,248,548.00	1.98	88.27	3.93609842	
TRAVELERS INS GROUP	27	14	1,065,549.00	1.70	89.97	2.876039115	
ST PAUL GROUP	27	14	1,008,595.00	1.61	91.58	2.576805023	
ITT HARTFORD INS GRP	27	14	838,285.00	1.33	92.91	1.780046415	
JOHN DEERE GROUP	27	14	813,312.00	1.29	94.2	1.675568923	
LUMBERMEN'S UNDRG AL	27	14	429,018.00	0.68	94.89	0.468228657	
CONTINENTAL INS COS	27	14	427,264.00	0.68	95.57	0.462424186	
MIDWEST EMPLRS CAS	27	14	292,389.00	0.47	96.03	0.218555888	
ORION CAPITAL COS	27	14	292,183.00	0.47	96.5	0.216250851	
SAFECO INS COMPANIES	27	14	270,521.00	0.43	96.93	0.185374463	
UNITED STATES F&G GR	27	14	216,877.00	0.35	97.27	0.119144756	
FEDERATED MUTUAL GRP	27	14	161,000.00	0.26	97.53	0.06565982	
BALDWIN & LYONS GRP	27	14	158,430.00	0.25	97.78	0.06358033	
PHICO INS CO	27	14	149,242.00	0.24	98.02	0.058419607	
EMPLOYERS RE GROUP	27	14	143,614.00	0.23	98.25	0.05224481	
CHUBB GRP OF INS COS	27	14	141,058.00	0.22	98.47	0.050401491	
SENTRY INS GROUP	27	14	116,180.00	0.18	98.66	0.034190912	
CUNA MUT INS GROUP	27	14	111,518.00	0.18	98.83	0.031501982	
ROYAL INS GROUP	27	14	106,138.00	0.17	99	0.028535779	
TIG HOLDINGS GROUP	27	14	91,434.00	0.15	99.15	0.021176948	
REPUBLIC WESTERN INS	27	14	83,363.00	0.13	99.28	0.017603321	
PETROLEUM CASUALTY	27	14	71,427.00	0.11	99.4	0.01292328	
HIGHLANDS INS GROUP	27	14	60,291.00	0.10	99.49	0.009207737	
FARMERS INS GROUP	27	14	52,549.00	0.08	99.58	0.006994825	
GULF INS GROUP	27	14	47,460.00	0.08	99.65	0.005705627	
AMER FINANCIAL GROUP	27	14	39,055.00	0.06	99.71	0.003863681	
ATLANTIC MUTUAL COS	27	14	32,143.00	0.05	99.76	0.002617103	
PHOENIX INS GROUP	27	14	29,206.00	0.05	99.81	0.002160688	
NAT AMERICAN INS	27	14	17,574.00	0.03	99.84	0.000782329	
CHURCH MUTUAL INS	27	14	15,900.00	0.03	99.86	0.000640387	
NORTHWESTERN NAT GRP	27	14	14,347.00	0.02	99.89	0.000521399	
INDIANA LUMBERMN MUT	27	14	12,890.00	0.02	99.91	0.000420876	
GENERAL ACC GROUP	27	14	11,251.00	0.02	99.93	0.000320649	
EMC INS COS	27	14	10,929.00	0.02	99.94	0.000302558	
FLORISTS' MUTUAL GRP	27	14	10,450.00	0.02	99.96	0.000276618	
TOTAL TOP 50	27	14	62,805,608.00	99.96	99.96		
TOTAL ALL COMPANIES	27	14	62,831,298.00	100	100		

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WORKERS' COMPENSATION RATEMAKING IN MONTANA

AT A GLANCE

Under the current system in Montana, the National Council on Compensation Insurance, as the licensed statistical organization in Montana, submits advisory rate recommendations to the Insurance Department for review prior to insurers' authority to use them. NCCI is comprised of insurance companies providing workers' compensation insurance, as well as other non-insurers. Insurers are required to submit loss and expense data to the NCCI. These data are actuarially evaluated to predict costs over the following year. Aggregation of industry-wide loss and expense data affords greater accuracy and promotes competition.

A rate request consists of many elements: The estimate of losses expected over the ensuing year (known as loss costs or pure premium, adjusted for trend and loss development), loss adjustment expenses (the cost incurred by claims management), operating costs, taxes, assessments, and other fees, and profit. States differ in how these rate elements are treated for purposes of Insurance Department review and approval. The rate process is closely supervised by state government.

✓ All states by statute require that rates be adequate but not excessive, and that they distribute costs fairly among policyholders.

✓ All states actively exercise their regulatory authority to ensure compliance. There are various approaches to state regulation.

✓ Some states allow insurers to adopt the rating organization's recommended rate without express Insurance Department approval, while others, such as Montana, provide effectively for prior approval by requiring NCCI to file proposed rates before their effective date. Montana, as do some other states, limits NCCI's developed rate to an advisory rate, permitting insurers to adopt its advisory rate (once approved) or an alternative rate.

✓ Other states require loss costs to be submitted for approval but require individual insurers to file their own expenses.

✓ Still others require the rating organization to develop a full, final rate, subject to Insurance Department approval. This rating system is similar to the practice in most states.

In recent years some states have modernized Insurance

Department oversight of workers' compensation ratemaking. There is a trend among the states to rely more on individual insurers to develop their own expenses. The terms "open competition," "competitive rating," or "loss cost rating" often are used to describe these approaches. However, they do not necessarily describe the relative degree of pricing freedom intended. *Therefore, what is crucial to understanding a rating system is the role of the rating organization, the extent to which its decisions are subject to prior approval, and the extent to which individual insurers can implement a rate without prior approval. Also of crucial importance is the standard of review.*

Montana requires the NCCI to collect data on losses, expenses, profits, licenses, fees, and other associated expenses, because under Montana law the NCCI is required to develop a fully developed and trended final advisory rate, including an allowance for expenses and reasonable profit.

Illinois, Maryland, and Oregon all are known as "competitive rating" jurisdictions; but the role of the rating organization, as well as the relative extent of pricing flexibility in each, differ markedly. Illinois allows the rating organization to develop a final rate which insurers may adopt. Prior approval is not required for either the rating organization's filing or individual insurer filings. Oregon, on the other hand, requires each insurer to separately gain approval of its own loss costs, notwithstanding the approval given to the rating organization's loss costs filing. Maryland requires prior approval of the rating organization's loss costs filing which individual insurers can adopt ("reference") in establishing their own final rates (adding in their own expense/profit factors) without prior approval. In all cases Insurance Commissioners still have the authority to disapprove an implemented rate if it fails to meet the statutory standard.

Multiple levels of prior approval -- requiring prior approval of a rating organization-developed loss cost element, as well as of the individual insurer-developed expenses/profit component -- combine the worst features of all rating laws -- requiring each insurer to absorb the expenses and endure the uncertainty of developing each component of its own rates, subjecting both the rating organization's activities, as well as individual insurer activities to prior approval, while preventing the timely review and implementation of necessary rating adjustments.

The standard of review is also an important consideration in evaluating a rating law. Although all states by statute require that rates not be excessive, inadequate, or unfairly discriminatory, they differ in how they interpret this standard.

Many states relying on greater individual insurer

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responsibility to develop their own rates look to competition in the marketplace as the test of whether a rate is excessive or inadequate and presume that a competitive market exists. Maryland's and Michigan's Insurance Departments, for example, are required to issue an annual report on the degree of competition in their respective markets for workers' compensation, predicated on accepted actuarial standards. The National Association of Insurance Commissioners' Model Competitive Rating Law, promulgated in the early 1980s, states expressly that: "Rates in a competitive market are not excessive." Many states, such as Minnesota, and Delaware have incorporated this language expressly into their rating laws while others, such as Missouri and California, have adopted this concept impliedly.

* * *

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Curt Laingen	MT Motor Carriers Assn	✓	

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TERRY MITTON	COALITION FOR WORK COMP SYSTEM IMPROVEMENT	✓	
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Jennifer Krueger 1101 S. Montana Butte, MT 59701 3746 E. Riggs St.	MONTANA ACADEMY OF PHYSICIAN ASSTS	F	✓
JOHN VAN SICKLE Riben East Helena, MT	Montana Federation of State Employees + Teachers		✓
Randy Spear	Self - PAs in Montana		✓
George Wood	MT. Self Employed Assn	✓	

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